Appendix D

Wetlands, Wildlife, and other Biological Resource Coordination and Correspondence

State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

DEPARTMENT OF TRANSPORTATION

JOHN R. NJORD, P.E.
Executive Director

CARLOS M. BRACERAS, P.E.
Deputy Director

February 12, 2008

Larry Crist, Field Supervisor
U.S. Fish and Wildlife Service
2369 West Orton Circle
West Valley City, Utah 84119

RE: STP-0262(8)23E – SR-262, Montezuma Creek to Aneth, San Juan County, Utah (PIN 5496)

Dear Larry:

The Utah Department of Transportation (UDOT) is proposing to improve existing State Route (SR) 162 in San Juan County, from the town of Montezuma Creek to approximately 0.5 miles west of the town of Aneth in San Juan County (see location map on page 2 of attached biological assessment). For your information, since the time the project was originally identified in the Statewide Transportation Improvement Plan, SR-262 has been renamed and re-signed to SR-162.

I am attaching a biological assessment (BA) written by URS Corporation. In this report, their biologists have identified several federally listed threatened, endangered, and candidate species known to exist in San Juan County. They then narrowed the list down to those with potential to exist near the project area. According to their study, only two species have potential to be affected by this project: endangered southwestern willow flycatchers (*Empidonax traillii extimus*), and candidate yellow-billed cuckoos (*Coccyzus americanus occidentalis*). Based on the mitigating measures outlined in the report, it is my opinion that while this project has potential to affect these species, is not likely to adversely affect them.

Also mentioned in this BA are several species protected under the Migratory Bird Treaty Act. Several of these species have potential to exist near the project area. Again, URS has outlined means to avoid or minimize impacts to these species.

We request your concurrence with these determinations. If you have any questions, please call me at (801) 965-4672, or email me at paulwest@utah.gov. Thank you for your assistance.

Sincerely,

Paul W. West

Paul W. West, UDOT Environmental Services
Wildlife/Wetlands Biologist

Encls.

cc: Shane Marshall – UDOT, Environmental Services
Rebecka Stromness – UDOT, Environmental Services
Betsy Skinner – UDOT, Environmental Services
Randall Taylor – UDOT, Region 4
Ed Woolford – FHWA
Devetta Hill – URS Corporation
File

BIOLOGICAL ASSESSMENT

SR-262 Montezuma Creek to Aneth
San Juan County, Utah
Project Number STP-0262(8)23E

For:

Utah Department of Transportation
Environmental
4501 South 2700 West
Salt Lake City, UT 84119

By:

URS Corporation
756 East Winchester Street, Suite 400
Salt Lake City, UT 84107

11 February 2008

1. PROJECT DESCRIPTION AND LOCATION

The Utah Department of Transportation (UDOT) is proposing to improve the existing State Route (SR) 162 in San Juan County from the town of Montezuma Creek to approximately 0.5 miles west of the town of Aneth. Since the project was originally identified in the State Transportation Improvement Plan, SR-262 has been renamed and signed SR-162. Due to the difficulty and potential confusion in changing the project name and number, it was decided that the project name and number would remain as originally labeled. However, this document will refer to all highways by their currently designated route number.

The proposed project calls for improvements to the safety of SR-162 by addressing the substandard areas of the existing roadway. The project is approximately 9 miles long and has a proposed right-of-way of approximately 150 feet on either side of the center line of the existing road. Project improvements would include the removal and replacement of existing culverts to accommodate the road improvements and to better manage surface drainage. Refer to **Figure 1** for the project location map.

The watersheds within the project area are typically undeveloped with some isolated areas of residential or commercial developments along the existing SR-162. The project area is within the Colorado Plateau eco-region and consists of benches, mesas, buttes, salt valleys, and cliffs characteristic of this eco-region. Juniper-pinyon communities are common at higher elevations while saltbush-greasewood and black brush communities dominate the lower elevations.

The existing highway generally parallels the San Juan River. The river has a wetland fringe associated with it as well as a 100-year floodplain. The river channel and the wetland will not be impacted by this project and only small areas of the floodplain will be modified. The project will cross 39 drainage channels, the majority of which are ephemeral. McElmo Creek, one of the largest drainages within the project area, has flowing water for most of the year and an associated wetland. McElmo Creek is part of a separate bridge replacement project and will not be impacted by this SR-162 road improvement project.

2. THEATENED AND ENDANGERED SPECIES OF CONCERN, THEIR HABITATS, AND POTENTIAL FOR IMPACTS

For the project, information on federally listed threatened, endangered, or candidate species, and state sensitive or special status species was gathered from the following sources:

- U.S. Fish and Wildlife Service (USFWS)
- Utah Department of Wildlife Resources (UDWR) Natural Heritage Program
- Navajo Nation Department of Fish and Wildlife (NNDFW) Natural Heritage Program
- Information on the biology, distribution, and listing history of each species was obtained from:
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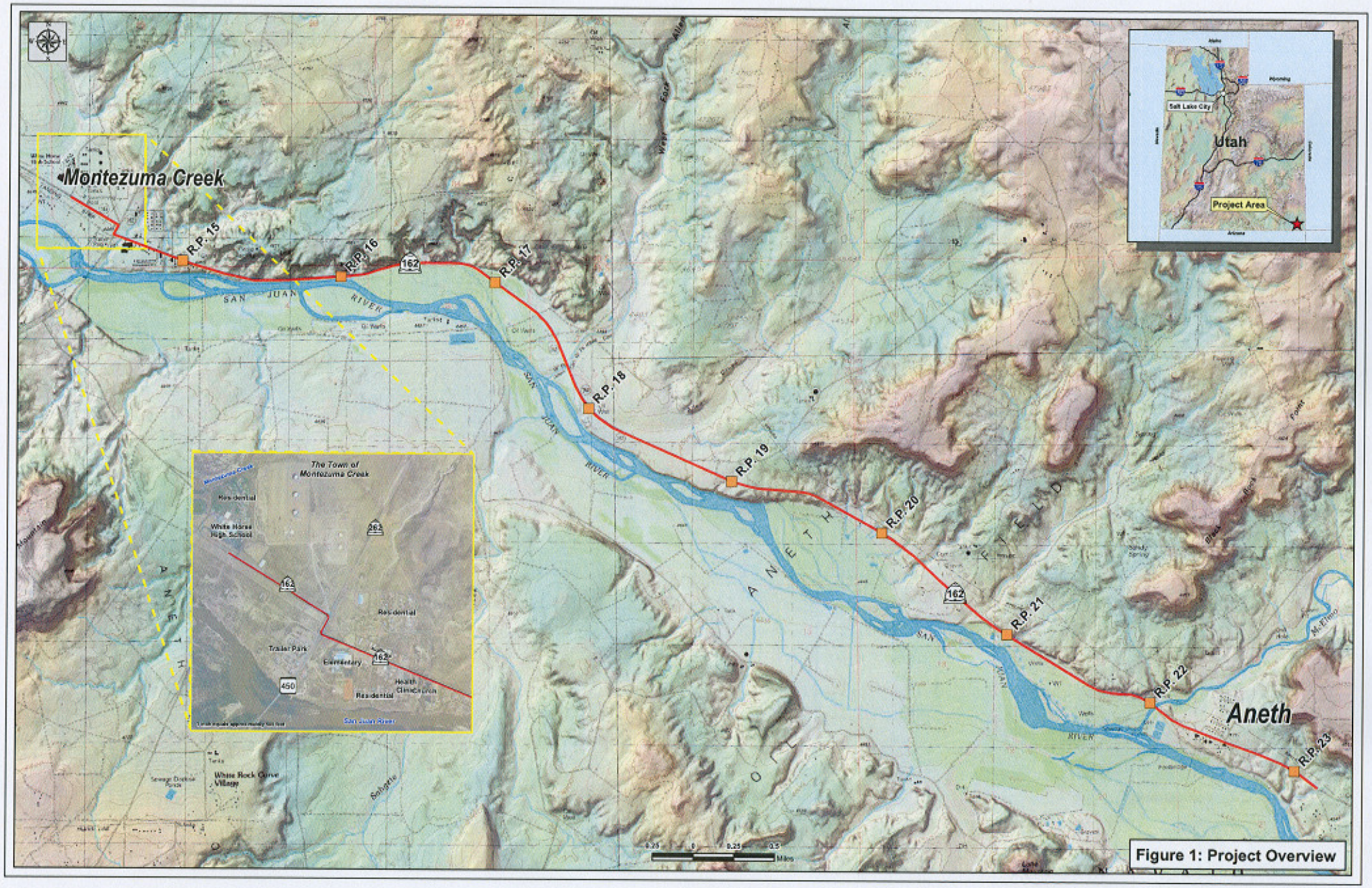
    - field guides;
    - communication with field experts at USFWS and UDWR.


Montezuma Creek
R.P. 15
R.P. 16
R.P. 17
R.P. 18
R.P. 19
R.P. 20
R.P. 21
R.P. 22
R.P. 23
Aneth
162
SAN JUAN RIVER
The Town of Montezuma Creek
Residential
White Horse High School
Trailer Park
Elementary
Health Clinic/Gym
450
Salt Lake City
Utah
Project Area
Figure 1: Project Overview

A total of nine (9) federal species are listed for San Juan County, Utah. **Table 1** lists the species, status, habitat, and the possibility for occurrence within the project area.

Table 1. Federal Special Status Species for the SR-162 Study Area

Common Name	Scientific Name	Status[1]	Habitat[2]	Occurrence in Study Area	Potential Affect
Birds					
Southwestern Willow Flycatcher	*Empidonax traillii extimus*	FE MBTA	Obligate riparian nester, especially in areas of dense willow.	Possible; large areas of suitable nesting habitat along the San Juan River; breeding pair near town of Bluff, Utah	May affect, not likely to adversely affect
California Condor	*Gymnogyps californianus*	FE MBTA	Prefers mountainous country at low and moderate elevations; rocky/brushy areas near cliffs. Colonies roost in tall cliffs, snags or open branched trees.	Unlikely; no suitable roosting sites in the study area	No effect
Yellow-billed Cuckoo	*Coccyzus americanus occidentalis*	FC MBTA	Nests in mature riparian woodland with dense understories of willow and other deciduous species. Nesting areas are large tracts (minimum of 3 hectares) of closed-canopy broad-leaved forest.	Possible; suitable habitat for migration though no suitable nesting habitat. UDWR has recent records of occurrence within 0.5-mile of the study area.	May affect, not likely to adversely affect
Mammals					
Black-footed ferret	*Mustela nigripes*	FE	Prairie dog towns of the plains and plateaus, typically occupy burrows for shelter	Unlikely; closest known population is approximately 200 miles away in central Arizona	No effect
Fish					
humpback chub	*Gila cypha*	FE	Prefers big rivers and lives where water depth, velocity, and turbidity make direct observation difficult	Unlikely; very little preferred habitat in the study area; the San Juan River in this area is too slow and lacks whitewater	No effect
bonytail chub	*Gila elegans*	FE	Found in the Colorado Basin, preferred habitat modest mid-channel currents of sandy, valley, and flatwater reaches, occupy pools and eddies.	Unlikely; suitable habitat in the San Juan River; no known occurrences in this area. Considered extirpated from Navajo Nation.	No effect
Colorado pikeminnow	*Ptychocheilus lucius*	FE	Occurs in the warm, swift waters of the big rivers of the Colorado Basin, adapted to rivers with seasonally variable flow, high silt loads, and turbulence.	Present; known population in San Juan River; may also utilize McElmo Creek. UDWR has recent records of occurrence within 0.5-mile of study area.	No effect
razorback sucker	*Xyrauchen texanus*	FE	Occurs in medium to large rivers with swift turbulent waters, also in backwater area.	Present; known population in San Juan River; may also utilize McElmo Creek during extreme high water. UDWR has recent records of occurrence within 0.5-mile of study area.	No effect
Plants					
Navajo sedge	*Carex specuicola*	FT	Occurs in hanging gardens along seeps and springs, prefers silty soils	Unlikely; preferred habitat does not occur in the study area; only known population in Utah is in southeast Utah along the Chinle Wash on the Navajo Nation in San Juan County.	No effect

[1] Status Abbreviation and Definitions

[1] FE = Federally-listed as **endangered** under the ESA.
FT = Federally-listed as **threatened** under the ESA.
FC = Federal **candidate** for listing under the ESA.
MBTA = Migratory Bird Treaty Act

[2] Sources: Adams 2003, Oliver 2000, Mikesic et al. 2005, UDWR 2005, UDWR 2006a, Durrant 1952, UDWR 2006b

There is no habitat for the following five (5) federally listed species: the black-footed ferret, the bonytail chub, the California Condor, the humpback chub, and the Navajo sedge. Potential habitat for the remaining four (4) federally listed species does occur within the project area. Those species include the Colorado pikeminnow, the razorback sucker, the Yellow-billed Cuckoo, and the Southwestern Willow Flycatcher (SWWFL). The Colorado pikeminnow and the razorback sucker are known to occur within the San Juan River and may also utilize McElmo Creek. The entire length of the San Juan River in Utah has been designated as Critical Habitat for the Colorado pikeminnow and the razorback sucker. The project area also has riparian habitat suitable for migration of the Yellow-billed Cuckoo, but there is no suitable nesting habitat. The project has large areas of suitable SWWFL nesting habitat along the San Juan River floodplain adjacent to the project. There is also a known breeding pair near the town of Bluff, Utah approximately 15 miles west of the town of Montezuma Creek.

3. MEASURES TO PROTECT THREATENED AND ENDANGERED SPECIES

Surveys for the Yellow-billed Cuckoo and the SWWFL have not been conducted. Surveys will be necessary prior to construction in areas of potential habitat to determine the impacts the project would have on these species. A presence/absence and nesting survey would be conducted for both bird species. Surveys for the Yellow-billed Cuckoo would occur during May to June to correspond with the spring migration and again during August to early September for the fall migration. According to the U.S. Fish and Wildlife Service SWWFL protocol memo, dated July 11, 2000, to determine if the SWWFL is actively nesting within project limits, surveys would occur during three (3) survey periods, with a minimum of one (1) survey per time period. The first survey would occur between May 15 to May 31; the second between June 1 to June 21; and the third between June 22 and July 17.

If present, measures would be taken to avoid disturbing any nesting activities by the SWWFL within the project area. These measures include:

- avoiding work near active SWWFL nests during the nesting season;
- limiting the removal of tamarisk, Russian olive trees, mature cottonwood trees and associated understory vegetation.

The project will not involve any in-stream disturbances of McElmo Creek or the San Juan River. Thus, this project will have "no effect" on the Colorado pikeminnow and the razorback sucker. Best Management Practices (BMPs) will be utilized to reduce adverse impacts to the San Juan River and McElmo Creek. The BMPs are:

- revegetation of disturbed areas
- sediment control structures to prevent sediment migration off-site

4. MIGRATORY BIRD TREATY ACT SPECIES OF CONCERN, THEIR HABITATS, AND POTENTIAL IMPACTS

The Migratory Bird Treaty Act (MBTA) ensures that all migratory birds and their parts, including eggs, nests, and feathers, will be fully protected. Table 2 is a list of 70 migratory birds that have been documented by USFWS to occur within the project area (Darnall 2008). The table lists the common and scientific name of the bird; the potential for occurrence within the project area; plus potential impacts the project would have on the breeding/nesting activities of the bird. Potential impacts were determined based on the bird's nesting behavior and the time of year the bird has potential to occur within the project area.

Table 2. Migratory Birds with the Potential to Occur Within the Project Area.*			
Common Name	**Scientific Name**	**Occurrence Within Project**	**Potential Nesting Impacts**
American Avocet	*Recurvirostra americana*	migratory	No
American Crow	*Corvus brachyrhynchos*	year-round	Possible
American Dipper	*Cinclus mexicanus*	year-round	No
American Goldfinch	*Carduelis tristis*	winter	No
American Kestrel	*Falco sparverius*	year-round	No
American Robin	*Turdus migratorius*	year-round	Possible
Ash-throated Flycatcher	*Myiarchus cinerascens*	summer	Possible
Bald Eagle	*Haliaeetus leucocephalus*	winter	Possible
Barn Swallow	*Hirundo rustica*	summer	Possible
Black Phoebe	*Sayornis nigricans*	rare	No
Black-billed Magpie	*Pica hudsonia*	year-round	Possible
Black-chinned Hummingbird	*Archilochus alexandri*	summer	Possible
Black-headed Grosbeak	*Pheucticus melanocephalus*	summer	Possible
Black-throated Sparrow	*Amphispiza bilineata*	summer	Possible
Blue Grosbeak	*Passerina caerulea*	summer	Possible
Blue-winged Teal	*Anas discors*	rare	No
Brewer's Blackbird	*Euphagus cyanocephalus*	year-round	Possible
Brewer's Sparrow	*Spizella breweri*	summer	Possible
Broad-tailed Hummingbird	*Selasphorus platycercus*	summer	Possible
Brown-headed cowbird	*Molothrus ater*	summer	Possible
Bullock's Oriole	*Icterus bullockii*	summer	Possible
Burrowing Owl	*Athene cunicularia*	summer	Possible
California Gull	*Larus californicus*	migration	No
Canada Goose	*Branta canadensis*	year-round	No
Canyon Wren	*Catherpes mexicanus*	year-round	Possible
CSsin's Kingbird	*Tyrannus vociferans*	summer	Possible
Chipping Sparrow	*Spizella passerina*	summer	Possible
Cinnamon Teal	*Anas cyan optera*	summer	No
Cliff Swallow	*Petrochelidon pyrrhonota*	summer	Possible
Common Nighthawk	*Chordeiles minor*	summer	Possible
Common Raven	*Corvus corax*	year-round	No
Common Yellowthroat	*Geothlypis trichas*	summer	Possible
Ferruginous Hawk	*Buteo regalis*	year-round	Possible
Golden Eagle	*Aquila chrysaetos*	year-round	Possible
Great Blue Heron	*Ardea herodias*	migratory	No
Horned Lark	*Eremophila alpestris*	year-round	Possible
House Finch	*Carpodacus mexicanus*	year-round	Possible
Killdeer	*Charadrius vociferus*	year-round	Possible
Lark Sparrow	*Chondestes grammacus*	summer	Possible
Lazuli Bunting	*Passerina amoena*	summer	Possible
Lesser Goldfinch	*Carduelis psaltria*	summer	Possible
Loggerhead Shrike	*Lanius ludovicianus*	year-round	Possible
Mallard	*Anas platyrhynchos*	winter	No
Mountain Bluebird	*Sialia currucoides*	year-round	Possible
Mourning Dove	*Zenaida macroura*	year-round	Possible
N. Rough-winged Swallow	*Stelgidopteryx serripennis*	summer	Possible
Northern Harrier	*Circus cyaneus*	year-round	No

Table 2. Migratory Birds with the Potential to Occur Within the Project Area.*			
Common Name	**Scientific Name**	**Occurrence Within Project**	**Potential Nesting Impacts**
Northern Mockingbird	*Mimus polyglottos*	year-round	Possible
Peregrine Falcon	*Falco peregrinus*	year-round	Possible
Prairie Falcon	*Falco mexicanus*	year-round	No
Red-tailed Hawk	*Buteo jamaicensis*	year-round	No
Red-winged Blackbird	*Agelaius phoeniceus*	year-round	No
Rock Wren	*Salpinctes obsoletus*	year-round	Possible
Sage Sparrow	*Amphisipiza belli*	summer	Possible
Sage Thrasher	*Oreoscoptes montanus*	summer	Possible
Say's Phoebe	*Sayornis saya*	year-round	No
Snowy Egret	*Egretta thula*	migratory	No
Song Sparrow	*Melospiza melodia*	year-round	Possible
Spotted Sandpiper	*Actitis macularia*	summer	Possible
Spotted Towhee	*Pipilo maculatus*	year-round	Possible
Swainson's Hawk	*Buteo swainsoni*	summer	No
Turkey Vulture	*Cathartes aura*	summer	No
Violet-green Swallow	*Tachycineta thalassina*	summer	Possible
Western Kingbird	*Tyrannus verticalis*	summer	Possible
Western Meadowlark	*Sturnella neglecta*	year-round	Possible
Western Tanager	*Piranga ludoviciana*	summer	Possible
White-faced Ibis	*Plegadis chihi*	migratory	No
White-throated Swift	*Aeronautes saxatalis*	summer	No
Yellow Warbler	*Dendroica petechia*	summer	Possible
Yellow-breasted Chat	*Icteria virens*	summer	Possible
*Information provided by Nathan Darnall, USFWS, January 2008.			

The potential for foraging of Ferruginous Hawk, the Peregrine Falcon, the Golden Eagle, and the Bald Eagle within the project area is likely. Because the project impacts only a small amount of foraging habitat compared to the large amount of habitat remaining the project will have no impact on these bird species. There is potential nesting habitat for the Ferruginous Hawk and the Peregrine Falcon and the project could impact these areas. Surveys to determine the presence of active nests should occur before construction and in the appropriate time of year.

5. MEASURES TO PROTECT MBTA SPECIES

Avoid nesting areas

To avoid impacts to migratory birds, UDOT should avoid construction (i.e. within a mile, or half mile – depending on the species) during their brooding seasons. According to communications in January 2008 with Nathan Darnall, U.S. Fish and Wildlife biologist, generally the nesting period for most passerine species in the project area is May through August with some species starting even earlier. Waterfowl and Burrowing Owls may have nesting seasons that start in March or April. Migratory raptors have brooding seasons that can be as early as January 1 thru August 31.

To avoid impacts UDOT may:

- avoid the nesting season within the spatial buffer for the species of concern;
- begin work before the nesting season and continue without stopping until far enough away from the nest site;
- make the habitat undesirable for ground nesting birds, such as the Burrowing Owl, by

disturbing potential nesting habitat in the winter before the beginning of nesting season;

Spatial Buffers

For raptors, the recommended spatial buffer for active nests is 1.0 mile for most threatened and endangered species (Romin and Muck 2002). For other diurnal raptors the spatial buffer is 0.5 miles, except for the Prairie Falcon, which is 0.25 miles (Romin and Muck 2002). Burrowing Owls require a spatial buffer of 0.25 miles. No spatial buffer is presently considered necessary for the American Kestrel (Romin and Muck 2002).

Following construction, all terrestrial disturbances will be revegetated using native species.

6. CONCLUSIONS AND RECOMMENDATIONS

The proposed safety improvements to the existing SR-162 will have "no effect" to the seven (7) listed species, California Condor, black-footed ferret, humpback chub, bonytail chub, Colorado pikeminnow, razorback sucker, and the Navajo sedge. The project area does have habitat that could support the SWWFL and the Yellow-billed Cuckoo, but impacts cannot be determined until presence/absence and nesting surveys can be conducted prior to construction. As a result, the project "may affect, but is not likely to adversely affect" the SWWFL and the Yellow-billed Cuckoo. If these two (2) bird species or active nests are observed, no construction will occur near nesting sites during their nesting season. Spatial buffers will be utilized around habitat areas to minimize impacts when the birds are present.

There could be impacts to migratory birds. To avoid impacts, construction will begin prior to the nesting season and continue without ceasing. Surveys will be conducted prior to construction to determine the presence of active raptor nests within the construction areas. Buffers will be utilized to avoid active raptor nesting sites. To discourage ground nesting birds from nesting within construction areas, these areas will be disturbed prior to the nesting season to make them less desirable.

Streams within the project area may be subject to the jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. The determination of jurisdiction for those streams will be coordinated with the U.S. Army Corps of Engineers.

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URS

February 12, 2008

Mr. Chris Wood
Utah Department of Natural Resources
Division of Wildlife Resources
1594 West North Temple, Suite 2110
PO Box 146301
Salt Lake City, Utah 84114

Subject: Biological Evaluation
SR-262 Montezuma Creek to Aneth, San Juan County, Utah
Project Number STP-0262(8)23E

Dear Mr. Wood,

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    - Utah Natural Heritage Program's (UNHP) Biodiversity Tracking and Conservation System (BIOTICS);
    - field guides;
    - communication with field experts at USFWS and UDWR.

The following sections describe the impacts and any avoidance/mitigation measures that UDOT will utilize for this project.

1. THEATENED AND ENDANGERED SPECIES OF CONCERN, THEIR HABITATS, AND POTENTIAL FOR IMPACTS

A total of nine (9) federal species are listed for San Juan County, Utah. **Table 1** lists the species, status, habitat, and the possibility for occurrence within the project area.

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Fish					
humpback chub	*Gila cypha*	FE	Prefers big rivers and lives where water depth, velocity, and turbidity make direct observation difficult	Unlikely; very little preferred habitat in the study area; the San Juan River in this area is too slow and lacks whitewater	No effect
bonytail chub	*Gila elegans*	FE	Found in the Colorado Basin, preferred habitat modest mid-channel currents of sandy, valley, and flatwater reaches, occupy pools and eddies.	Unlikely; suitable habitat in the San Juan River; no known occurrences in this area. Considered extirpated from Navajo Nation.	No effect

Table 1. Federal Special Status Species for the SR-162 Study Area					
Common Name	**Scientific Name**	**Status[1]**	**Habitat[2]**	**Occurrence in Study Area**	**Potential Affect**
Colorado pikeminnow	*Ptychocheilus lucius*	FE	Occurs in the warm, swift waters of the big rivers of the Colorado Basin, adapted to rivers with seasonally variable flow, high silt loads, and turbulence.	Present; known population in San Juan River; may also utilize McElmo Creek. UDWR has recent records of occurrence within 0.5-mile of study area.	No effect
razorback sucker	*Xyrauchen texanus*	FE	Occurs in medium to large rivers with swift turbulent waters, also in backwater area.	Present; known population in San Juan River; may also utilize McElmo Creek during extreme high water. UDWR has recent records of occurrence within 0.5-mile of study area.	No effect
Plants					
Navajo sedge	*Carex specuicola*	FT	Occurs in hanging gardens along seeps and springs, prefers silty soils	Unlikely; preferred habitat does not occur in the study area; only known population in Utah is in southeast Utah along the Chinle Wash on the Navajo Nation in San Juan County.	No effect

[1] Status Abbreviation and Definitions
FE = Federally-listed as endangered under the ESA.
FT = Federally-listed as **threatened** under the ESA.
FC = Federal **candidate** for listing under the ESA.
MBTA = Migratory Bird Treaty Act
[2] Sources: Adams 2003, Oliver 2000, Mikesic et al. 2005, UDWR 2005, UDWR 2006a, Durrant 1952, UDWR 2006b

There is no habitat for the following five (5) federally listed species: the black-footed ferret, the bonytail chub, the California Condor, the humpback chub, and the Navajo sedge. Potential habitat for the remaining four (4) federally listed species does occur within the project area. Those species include the Colorado pikeminnow, the razorback sucker, the Yellow-billed Cuckoo, and the Southwestern Willow Flycatcher (SWWFL). The Colorado pikeminnow and the razorback sucker are known to occur within the San Juan River and may also utilize McElmo Creek. The entire length of the San Juan River in Utah has been designated as Critical Habitat for the Colorado pikeminnow and the razorback sucker. The project area also has riparian habitat suitable for migration of the Yellow-billed Cuckoo, but there is no suitable nesting habitat. The project has large areas of suitable SWWFL nesting habitat along the San Juan River floodplain adjacent to the project. There is also a known breeding pair near the town of Bluff, Utah approximately 15 miles west of the town of Montezuma Creek.

2. MEASURES TO PROTECT THREATENED AND ENDANGERED SPECIES

Surveys for the Yellow-billed Cuckoo and the SWWFL have not been conducted. Surveys will be necessary prior to construction in areas of potential habitat to determine the impacts the project would have on these species. A presence/absence and nesting survey would be conducted for both bird species. Surveys for the Yellow-billed Cuckoo would occur during May to June to correspond with the spring migration and again during August to early September for the fall migration. According to the U.S. Fish and Wildlife Service SWWFL protocol memo, dated July 11, 2000, to determine if the SWWFL is actively nesting within project limits, surveys would occur during three (3) survey periods, with a minimum of one (1) survey per time period. The first survey would occur between May 15 to May 31; the second between June 1 to June 21; and the third between June 22 and July 17.

If present, measures would be taken to avoid disturbing any nesting activities by the SWWFL within the project area. These measures include:

- avoiding work near active SWWFL nests during the nesting season;

- limiting the removal of tamarisk, Russian olive trees, mature cottonwood trees and associated understory vegetation.

The project will not involve any in-stream disturbances of McElmo Creek or the San Juan River. Thus, this project will have "no effect" on the Colorado pikeminnow and the razorback sucker. Best Management Practices (BMPs) will be utilized to reduce adverse impacts to the San Juan River and McElmo Creek. The BMPs are:

- revegetation of disturbed areas;
- sediment control structures to prevent sediment migration off-site.

3. MIGRATORY BIRD TREATY ACT SPECIES OF CONCERN, THEIR HABITATS, AND POTENTIAL IMPACTS

The Migratory Bird Treaty Act (MBTA) ensures that all migratory birds and their parts, including eggs, nests, and feathers, will be fully protected. **Table 2** is a list of 70 migratory birds that have been documented by USFWS to occur within the project area (Darnall 2008). The table lists the common and scientific name of the bird; the potential for occurrence within the project area; plus potential impacts the project would have on the breeding/nesting activities of the bird. Potential impacts were determined based on the bird's nesting behavior and the time of year the bird has potential to occur within the project area.

Table 2. Migratory Birds with the Potential to Occur Within the Project Area.*

Common Name	Scientific Name	Occurrence Within Project	Potential Nesting Impacts
American Avocet	*Recurvirostra americana*	migratory	No
American Crow	*Corvus brachyrhynchos*	year-round	Possible
American Dipper	*Cinclus mexicanus*	year-round	No
American Goldfinch	*Carduelis tristis*	winter	No
American Kestrel	*Falco sparverius*	year-round	No
American Robin	*Turdus migratorius*	year-round	Possible
Ash-throated Flycatcher	*Myiarchus cinerascens*	summer	Possible
Bald Eagle	*Haliaeetus leucocephalus*	winter	Possible
Barn Swallow	*Hirundo rustica*	summer	Possible
Black Phoebe	*Sayornis nigricans*	rare	No
Black-billed Magpie	*Pica hudsonia*	year-round	Possible
Black-chinned Hummingbird	*Archilochus alexandri*	summer	Possible
Black-headed Grosbeak	*Pheucticus melanocephalus*	summer	Possible
Black-throated Sparrow	*Amphispiza bilineata*	summer	Possible
Blue Grosbeak	*Passerina caerulea*	summer	Possible
Blue-winged Teal	*Anas discors*	rare	No
Brewer's Blackbird	*Euphagus cyanocephalus*	year-round	Possible
Brewer's Sparrow	*Spizella breweri*	summer	Possible
Broad-tailed Hummingbird	*Selasphorus platycercus*	summer	Possible
Brown-headed cowbird	*Molothrus ater*	summer	Possible
Bullock's Oriole	*Icterus bullockii*	summer	Possible
Burrowing Owl	*Athene cunicularia*	summer	Possible
California Gull	*Larus californicus*	migration	No
Canada Goose	*Branta canadensis*	year-round	No
Canyon Wren	*Catherpes mexicanus*	year-round	Possible
CSsin's Kingbird	*Tyrannus vociferans*	summer	Possible
Chipping Sparrow	*Spizella passerina*	summer	Possible

Table 2. Migratory Birds with the Potential to Occur Within the Project Area.*			
Common Name	**Scientific Name**	**Occurrence Within Project**	**Potential Nesting Impacts**
Cinnamon Teal	*Anas cyan optera*	summer	No
Cliff Swallow	*Petrochelidon pyrrhonota*	summer	Possible
Common Nighthawk	*Chordeiles minor*	summer	Possible
Common Raven	*Corvus corax*	year-round	No
Common Yellowthroat	*Geothlypis trichas*	summer	Possible
Ferruginous Hawk	*Buteo regalis*	year-round	Possible
Golden Eagle	*Aquila chrysaetos*	year-round	Possible
Great Blue Heron	*Ardea herodias*	migratory	No
Horned Lark	*Eremophila alpestris*	year-round	Possible
House Finch	*Carpodacus mexicanus*	year-round	Possible
Killdeer	*Charadrius vociferus*	year-round	Possible
Lark Sparrow	*Chondestes grammacus*	summer	Possible
Lazuli Bunting	*Passerina amoena*	summer	Possible
Lesser Goldfinch	*Carduelis psaltria*	summer	Possible
Loggerhead Shrike	*Lanius ludovicianus*	year-round	Possible
Mallard	*Anas platyrhynchos*	winter	No
Mountain Bluebird	*Sialia currucoides*	year-round	Possible
Mourning Dove	*Zenaida macroura*	year-round	Possible
N. Rough-winged Swallow	*Stelgidopteryx serripennis*	summer	Possible
Northern Harrier	*Circus cyaneus*	year-round	No
Northern Mockingbird	*Mimus polyglottos*	year-round	Possible
Peregrine Falcon	*Falco peregrinus*	year-round	Possible
Prairie Falcon	*Falco mexicanus*	year-round	No
Red-tailed Hawk	*Buteo jamaicensis*	year-round	No
Red-winged Blackbird	*Agelaius phoeniceus*	year-round	No
Rock Wren	*Salpinctes obsoletus*	year-round	Possible
Sage Sparrow	*Amphisipiza belli*	summer	Possible
Sage Thrasher	*Oreoscoptes montanus*	summer	Possible
Say's Phoebe	*Sayornis saya*	year-round	No
Snowy Egret	*Egretta thula*	migratory	No
Song Sparrow	*Melospiza melodia*	year-round	Possible
Spotted Sandpiper	*Actitis macularia*	summer	Possible
Spotted Towhee	*Pipilo maculatus*	year-round	Possible
Swainson's Hawk	*Buteo swainsoni*	summer	No
Turkey Vulture	*Cathartes aura*	summer	No
Violet-green Swallow	*Tachycineta thalassina*	summer	Possible
Western Kingbird	*Tyrannus verticalis*	summer	Possible
Western Meadowlark	*Sturnella neglecta*	year-round	Possible
Western Tanager	*Piranga ludoviciana*	summer	Possible
White-faced Ibis	*Plegadis chihi*	migratory	No
White-throated Swift	*Aeronautes saxatalis*	summer	No
Yellow Warbler	*Dendroica petechia*	summer	Possible
Yellow-breasted Chat	*Icteria virens*	summer	Possible
*Information provided by Nathan Darnall, USFWS, January 2008.			

The potential for foraging of Ferruginous Hawk, the Peregrine Falcon, the Golden Eagle, and the Bald Eagle within the project area is likely. Because the project impacts only a small amount of foraging habitat compared to the large amount of habitat remaining the project will have no impact on these bird species. There is potential nesting habitat for the Ferruginous Hawk and the Peregrine Falcon and the project could impact these areas. Surveys to determine the presence of active nests should occur before construction and in the appropriate time of year.

4. MEASURES TO PROTECT MBTA SPECIES

Avoid nesting areas

To avoid impacts to migratory birds, UDOT should avoid construction (i.e. within a mile, or half mile – depending on the species) during their brooding seasons. According to communications in January 2008 with Nathan Darnall, U.S. Fish and Wildlife biologist, generally the nesting period for most passerine species in the project area is May through August with some species starting even earlier. Waterfowl and Burrowing Owls may have nesting seasons that start in March or April. Migratory raptors have brooding seasons that can be as early as January 1 thru August 31.

To avoid impacts UDOT may:

- avoid the nesting season within the spatial buffer for the species of concern;
- begin work before the nesting season and continue without stopping until far enough away from the nest site;
- make the habitat undesirable for ground nesting birds, such as the Burrowing Owl, by disturbing potential nesting habitat in the winter before the beginning of nesting season.

Spatial Buffers

For raptors, the recommended spatial buffer for active nests is 1.0 mile for most threatened and endangered species (Romin and Muck 2002). For other diurnal raptors the spatial buffer is 0.5 miles, except for the Prairie Falcon, which is 0.25 miles (Romin and Muck 2002). Burrowing Owls require a spatial buffer of 0.25 miles. No spatial buffer is presently considered necessary for the American Kestrel (Romin and Muck 2002).

Following construction, all terrestrial disturbances will be revegetated using native species.

5. UDWR SPECIAL STATUS SPECIES, THEIR HABITATS, AND POTENTIAL FOR IMPACTS

Only those species that have not been previously mentioned will be discussed in this section.

Table 3. UDWR Special Status Species in Addition to the Federally Listed Species for the SR-162 Study Area

Common Name	Scientific Name	Status[1]	Habitat[2]	Occurrence in Study Area	Potential Affect
Mammals					
Townsend's big-eared bat	*Corynorhinus townsendii*	USS-SPC	Variety of habitats, desert shrub, montane forest, mixed forest. Inhabits caves, mines, and buildings.	Unlikely; no suitable roosting sites in the study area; may occur during foraging only	No impact

Table 3. UDWR Special Status Species in Addition to the Federally Listed Species for the SR-162 Study Area

Common Name	Scientific Name	Status[1]	Habitat[2]	Occurrence in Study Area	Potential Affect
Allen's big-eared bat	*Idionycteris phyllotis*	USS-SPC	Wide range of habitat including lowland riparian, desert shrub to mixed forest, rocky and woodland habitats; roosts in caves and rock crevices during the day.	Possible; may occur during foraging only, rare in Utah; none observed	No impact
fringed myotis	*Myotis thysanodes*	USS-SPC	Variety of habitats, including mixed conifer, desert riparian, and pinyon-juniper in areas with rocky outcroppings, cliffs, and canyons. Inhabits caves, mines, and buildings, most often in desert and woodland areas.	Unlikely; no suitable roosting sites in the study area; may occur during foraging only	No impact
big free-tailed bat	*Nyctinomops macrotis*	USS-SPC	Variety of habitats, including lowland riparian, desert shrub, montane forest, rocky and woodland areas; roosts in caves, abandoned mines, buildings, and rock crevices.	Possible; may occur during foraging only; rare in Utah; none observed	No impact
silky pocket mouse	*Perognathus flavus*	USS-SPC	Inhabits sandy soils associated with river banks with sparse stands of weeds and shrubs	Possible; coarse soils are present in much of the study area	May Impact
Reptiles					
common chuckwalla	*Sauromalus ater*	USS-SPC	Preferred habitat is boulder-covered slopes, at elevations up to 4,500 feet; most common at lower elevations	Unlikely; the study area contains limited suitable habitat; there are no known occurrences along the San Juan River	No impact
desert night lizard	*Xantusia vigilis*	USS-SPC	Prefers arid to semiarid lands, occupy fallen plant debris, rock crevices, under bark. Can occur up to 9,300 feet in elevation	Possible; documented occurrences in this part of San Juan County	May Impact
Fish					
bluehead sucker	*Catostomus discobolus*	USS-CS	Occur primarily in rivers and streams with widely varying characteristics	Likely; suitable habitat in San Juan River and McElmo Creek. UDWR has recent records of occurrence within 0.5-mile of study area.	No impact
flannelmouth sucker	*Catostomus latipinnis*	USS-CS	Inhabit a variety of river habitats including riffles, runs, eddies, and backwaters.	Likely; known population in San Juan River; may also utilize McElmo Creek. UDWR has recent records of occurrence within 0.5-mile of study area.	No impact
roundtail chub	*Gila robusta*	USS-CS	Found in warm streams and larger rivers, usually in habitats with slow-flowing water adjacent to areas of faster water.	Likely; suitable habitat in the San Juan River. UDWR has recent records of occurrence within 0.5-mile of study area.	No impact

[1] Status Abbreviation and Definitions
FE = Federally-listed as **endangered** under the ESA.
FT = Federally-listed as **threatened** under the ESA.
FC = Federal **candidate** for listing under the ESA.
USS= Utah Sensitive Species;
CS= **Conservation Agreement Species**
SPC=**Wildlife Species of Concern**
MBTA = Migratory Bird Treaty Act

[2] Sources: Adams 2003, Oliver 2000, Mikesic et al. 2005, UDWR 2005, UDWR 2006a, Durrant 1952, UDWR 2006b

As can be seen in the **Table 3**, of the ten (10) species of concern listed by the UDWR, seven (7) were determined to have potential habitat within the project area. With the exception of the fish species, no known populations of the listed UDWR species occur within the project area. UDWR has identified a population of bluehead suckers in the San Juan River within 0.5 miles of the project. Habitat for the bluehead sucker was also identified in McElmo Creek as well as the San Juan River within the project area. UDWR has also identified populations of the flannelmouth sucker and the roundtail chub within the San Juan River. No individuals of any of the previously mentioned UDWR listed species were observed within the project limits.

The project will have no impacts on the UDWR listed bat species. Only foraging habitat has been identified within the project limits for the Allen's big-eared bat, the big free-tailed bat, the fringed myotis, and the Townsend's big-eared bat. Bat species tend to forage over flowing streams or in areas of high insect populations. There will be no impacts to areas streams. Any impacts to upland foraging habitats will not adversely impact these species because large amounts of foraging habitats exist outside of the project limits.

Habitat for the silky pocket mouse and the desert night lizard does occur within the project area. Areas adjacent to the San Juan River will be altered to accommodate the road improvements, which may temporarily affect any silky pocket mouse populations that might exist. The night lizard is associated with rock crevices and fallen plant debris, which are present within the project limits.

6. MEASURES TO PROTECT UDWR SPECIAL STATUS SPECIES

To protect the sensitive fish species, UDOT will utilize BMPs to keep sediments on the construction site and out of the streams within the project area. Silt fences and temporary ditches may be used to capture sediments and direct them away from streams.

To protect the sensitive bat species the project should avoid adversely impacting streams with permanent or intermittent water flow. These streams provide the insect populations the bats feed on as well as the watering sources the bats depend on. The project will utilize BMPs to prevent the degradation of McElmo Creek and the San Juan River.

Avoiding potential habitat for the silky pocket mouse and the desert lizard may not be possible. One way to mitigate for the loss of habitat would be the creation of new habitats within the disturbed areas. For the silky pocket mouse, this will be accomplished by the revegetation of the disturbed areas with herbaceous and shrub species. The placement of earth and rocks within disturbed areas would encourage the desert lizard to utilize areas within the project limits.

7. CONCLUSIONS AND RECOMMENDATIONS

The proposed safety improvements to the existing SR-162 will have "no effect" on the seven (7) federally listed species: California Condor, black-footed ferret, humpback chub, bonytail chub, Colorado pikeminnow, razorback sucker, and the Navajo sedge. The project area does have habitat that could support the SWWFL and the Yellow-billed Cuckoo, but impacts cannot be determined until presence/absence and nesting surveys can be conducted prior to construction. As a result, the project "may affect, but is not likely to adversely affect" the SWWFL and the Yellow-billed Cuckoo. If these two (2) bird species or active nests are observed, no construction

will occur near nesting sites during their nesting season. Spatial buffers will be utilized around habitat areas to minimize impacts when the birds are present.

There could be impacts to migratory birds. To avoid impacts, construction will begin prior to the nesting season and continue without ceasing. Surveys will be conducted prior to construction to determine the presence of active raptor nests within the construction areas. Buffers will be utilized to avoid active raptor nesting sites. To discourage ground nesting birds from nesting within construction areas, these areas will be disturbed prior to the nesting season to make them less desirable.

There could be impacts to the silky pocket mouse and the night lizard by the destruction of their habitats. Revegetation of disturbed areas and the placement of earth and rock in the course of construction may create new habitats for the silky pocket mouse and the night lizard.

Streams within the project area may be subject to the jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. The determination of jurisdiction for those streams will be coordinated with the U.S. Army Corps of Engineers.

On behalf of UDOT, I request your concurrence with these findings. I have attached the correspondence from the agencies that responded to our request for information on special status species. If you have any questions or comments, please contact me at 801.904.4068.

Thank you for your assistance.

URS Corporation

Devetta Hill
Senior Ecologist

Attachments
cc: Brenda Redwing, FHWA
Rebecka Stromness, UDOT Environmental Program Manager
Shane Marshall, UDOT Environmental Division
Paul West, UDOT Environmental
Betsy Skinner, UDOT Environmental
Kim Manwill, UDOT Region 4
Randall Taylor, UDOT Region 4
Jared Barton, UDOT Region 4
Ron W. Malecki, Navajo Fish & Wildlife
Project File

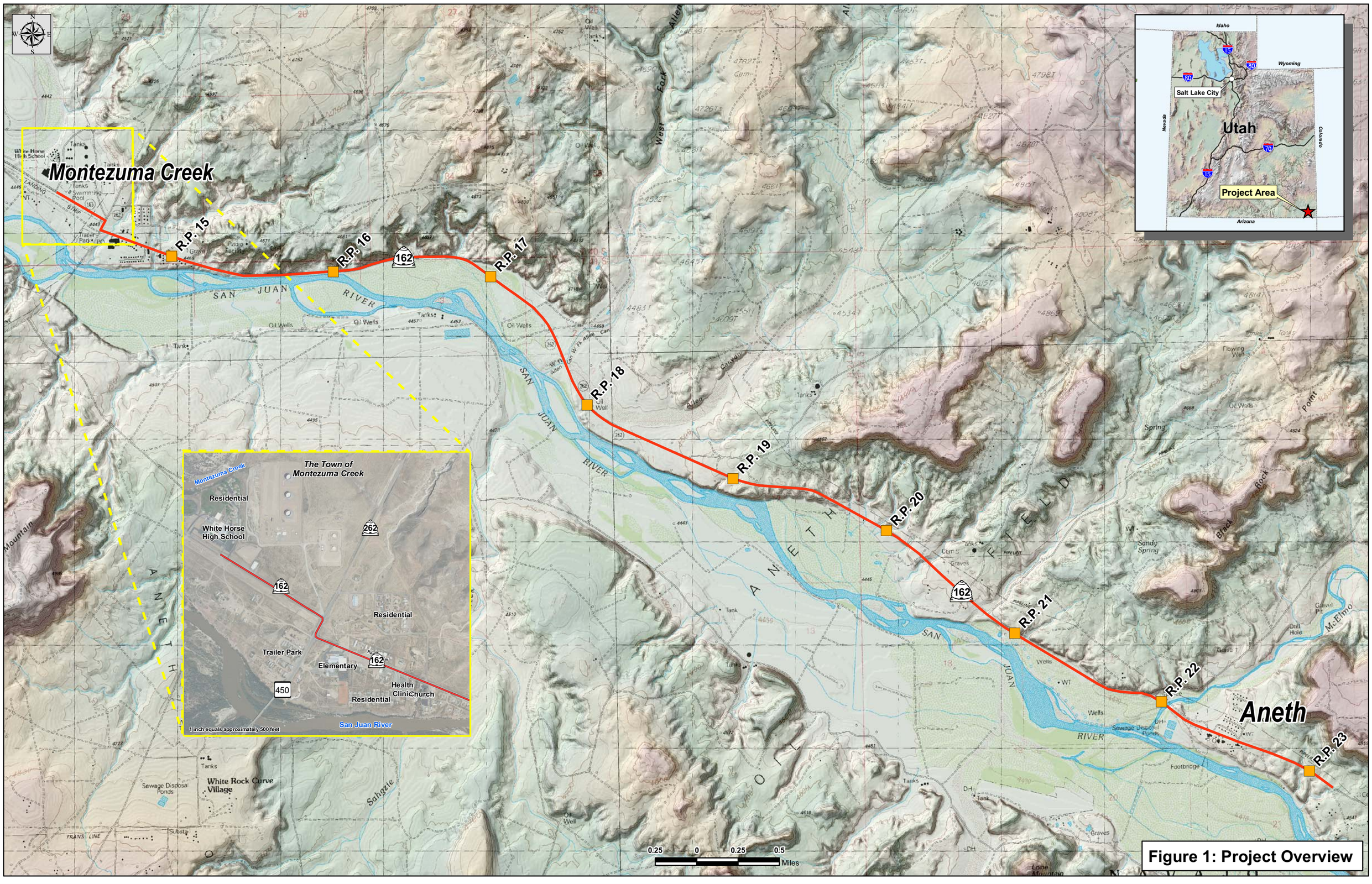

Figure 1: Project Overview

PROJ # 24584702
FILE # 15-70

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Wildlife Resources

JAMES F. KARPOWITZ
Division Director

September 7, 2006

Andy Herb
URS Corporation
756 East Winchester Street, Suite 400
Salt Lake City, Utah 84107

Dear Andy Herb:

I am writing in response to your email dated September 5, 2006 regarding information on species of special concern proximal to the URS project located on approximately 8 miles of SR 262 in San Juan County, Utah.

Within a ½-mile radius of the project area noted above the Utah Division of Wildlife Resources (UDWR) has recent records of occurrence for Colorado pikeminnow, bluehead sucker, flannelmouth sucker, razorback sucker, roundtail chub, and yellow-billed cuckoo. All of the aforementioned species are included on the *Utah Sensitive Species List.*

The information provided in this letter is based on data existing in the Utah Division of Wildlife Resources' central database at the time of the request. It should not be regarded as a final statement on the occurrence of any species on or near the designated site, nor should it be considered a substitute for on-the-ground biological surveys. Moreover, because the Utah Division of Wildlife Resources' central database is continually updated, and because data requests are evaluated for the specific type of proposed action, any given response is only appropriate for its respective request.

In addition to the information you requested, other significant wildlife values might also be present on the designated site. Please contact UDWR's habitat manager for the southeastern region, Chris Wood, at (435) 636-0279 if you have any questions.

Please contact our office at (801) 538-4759 if you require further assistance.

Sincerely,

Sarah Lindsey

Sarah Lindsey
Information Manager
Utah Natural Heritage Program

cc: Chris Wood, SER

1594 West North Temple, Suite 2110, PO Box 146301, Salt Lake City, UT 84114-6301
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THE NAVAJO NATION
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PROJ # 24584702
FILE # 15-67

PRESIDENT
JOE SHIRLEY, JR.
VICE PRESIDENT
FRANK J. DAYISH, JR.

03 April 2006

File#06URS02

Andy Herb, Project Biologist
URS Corporation
756 E. Winchester Street
Suite 400
Salt Lake City, UT 84107

SUBJECT: SR-262; MONTEZUMA CREEK TO ANETH DATA REQUEST FOR SPECIES OF CONCERN

Mr. Herb:

The following information on species of concern[1] is provided in response to your 27 March 2006 request concerning the subject project, which consists of the Federal Highway Administration (FHWA) and the Utah Department of Transporation (UDOT) proposed corridor extension from Montezuma Creek, Utah to Aneth, Utah.

Each 7.5-minute quadrangle containing project boundaries is addressed separately below. For potentially occurring species these species lists are quadrangle-specific rather than project-specific. Potential for species has been determined primarily on quadrangle-wide coarse habitat characteristics and species range information. Your project biologist should determine habitat suitability at the project site(s).

A total of fourteen (14) species both known and/or potential are included in this response. They are:

1. Aquila chrysaetos (Golden Eagle); NESL group 3; MBTA; EPA.
2. Buteo regalis (Ferruginous Hawk); NESL group 3; MBTA.
3. Catostomus discobolus (Bluehead Sucker); NESL group 4.
4. Cinclus mexicanus (American Dipper); NESL group 3; MBTA.
5. Cottus bairdi (Mottled Sculpin); NESL group 4.
6. Empidonax traillii extimus (Southwestern Willow Flycatcher); NESL group 2; ESA endangered; MBTA.
7. Falco peregrinus (Peregrine Falcon); NESL group 4; MBTA.
8. Gila robusta (Roundtail Chub); NESL group 2.
9. Haliaeetus leucocephalus (Bald Eagle); ESA threatened; MBTA; EPA.
10. Mustela nigripes (Black-footed Ferret); NESL group 2; ESA endangered.

[1] "Species of concern" include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance. For each species, the following tribal and federal statuses are indicated: Navajo Endangered Species List (NESL), federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with **only** ESA candidate or NESL group 4 status; please be aware of these species during surveys and inform the NFWD of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management is important for conservation and may contribute to ensuring they will not be uplisted in the future. Species without ESA or NESL legal protection (e.g., NESL group 4 species) are only included in responses on a regular basis and may not be included in this response. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.

11. Ptychocheilus lucius (Colorado Pikeminnow); NESL group 2; ESA threatened.
12. Rana pipiens (Northern Leopard Frog); NESL group 2.
13. Xyrauchen texanus (Razorback Sucker); NESL group 2; ESA endangered.
14. Astragalus cronquistii (Cronquist Milk-vetch); NESL group 4.

MONTEZUMA CREEK, UT 7.5-MINUTE QUADRANGLE

Project Location: T40S, R24E, Sec. 32 (RP 15, RP 16, RP17)
T41S, R24E, Sec. 4, 3, 2

Species of concern **known** to occur on or near the project site(s) include:

1. Empidonax traillii extimus; For more information contact David Mikesic, NFWD Zoologist, at (928) 871-7070.
2. Xyrauchen texanus; For more information contact David Mikesic, NFWD Zoologist, at (928) 871-7070.

Species of concern with **potential** to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. Aquila chrysaetos
2. Buteo regalis
3. Catostomus discobolus
4. Cinclus mexicanus
5. Cottus bairdi
6. Falco peregrinus
7. Gila robusta
8. Haliaeetus leucocephalus
9. Mustela nigripes
10. Ptychocheilus lucius
11. Rana pipiens
12. Astragalus cronquistii

Also of concern are impacts to any **wetland or riparian habitats** and their associated species, such as those of San Juan River.

WHITE MESA VILLAGE, UT 7.5-MINUTE QUADRANGLE

Project Location: T41S, R24E, Sec. 2, (RP 18)

Species of concern **known** to occur on or near the project site(s) include:

1. Xyrauchen texanus; For more information contact David Mikesic, NFWD Zoologist, at (928) 871-7070.

Species of concern with **potential** to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. Aquila chrysaetos
2. Buteo regalis
3. Catostomus discobolus
4. Charadrius montanus
5. Cinclus mexicanus
6. Cottus bairdi
7. Empidonax traillii extimus
8. Falco peregrinus
9. Gila robusta

10. Haliaeetus leucocephalus
11. Mustela nigripes
12. Ptychocheilus lucius
13. Rana pipiens
14. Astragalus cronquistii

Also of concern are impacts to any **wetland or riparian habitats** and their associated species, such as those of San Juan River.

ANETH, UT 7.5-MINUTE QUADRANGLE

Project Location: T41S, R24E, Sec. 11, 12
T41S, R25E, Sec. 7, 18, 17, 16, 21

Known to occur within three miles of the project site:

1. Astragalus cronquistii

Species of concern with **potential** to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. Aquila chrysaetos
2. Buteo regalis
3. Catostomus discobolus
4. Charadrius montanus
5. Cinclus mexicanus
6. Cottus bairdi
7. Empidonax traillii extimus
8. Falco peregrinus
9. Gila robusta
10. Haliaeetus leucocephalus
11. Mustela nigripes
12. Ptychocheilus lucius
13. Rana pipiens
14. Xyrauchen texanus

Also of concern are impacts to any **wetland or riparian habitats** and their associated species, such as those of San Juan River.

Potential for the black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per NFWD guidelines) occur in the project area.

Potential for Puccinellia parishii should be evaluated if wetland conditions exists that contain white alkaline crusts.

Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts.[4] Further questions pertaining to surveys should be referred to Species Account. Surveyors on the Navajo Nation must be **permitted** by the Director, NFWD. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (David Mikesic) for animals at 871-7070, and Botanist (Daniela Roth) for plants at

[4] Available upon request free of charge by contacting Data Manager at 871-6489

(928)523-8445. Questions regarding biological evaluation should be directed to Rita Whitehorse-Larsen (Environmental Reviewer) at 871-7060.

On 21 March 1994 (Federal Register, Vol. 59, No. 54), the U.S. Fish and Wildlife Service designated portions of the San Juan River (SJR) as critical habitat for Ptychocheilus lucius (Colorado squawfish) and Xyrauchen texanus (Razorback sucker). Colorado squawfish critical habitat includes the SJR and its 100-year floodplain from the State Route 371 Bridge in T29N, R13W, sec. 17 (New Mexico Meridian) to Neskahai Canyon in the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian) up to the full pool elevation. Razorback sucker critical habitat includes the SJR and its 100-year floodplain from the Hogback Diversion in T29N, R16W, sec. 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian). All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of critical habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.

Potential impacts to **wetlands** should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the NFWD's Natural Heritage Program (NHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NHP). The NHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation.

The information in this report was identified by the NFWD's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is strongly recommended. It should not be regarded as the final statement on the occurrence of any species, nor should it substitute for on-site surveys. Also, because the NFWD's information is continually updated, any given information response is only wholly appropriate for its respective request.

For a list of sensitive species on the Navajo Nation please refer to our website at www.navajofishandwildlife.org.

An invoice for this information is attached.

If you have any questions I may be reached at (928) 871-6472.

Sonja Detsoi, Wildlife Tech.
Natural Heritage Program
Department of Fish and Wildlife

CONCURRENCE

Gloria M. Tom, Director
Department of Fish & Wildlife
Division of Natural Resources

xc: file/chrono
Field Supervisor, USFWS, UT Ecological Services Field Office

URS

February 12, 2008

Ron W. Malecki
Wildlife Biologist - Environmental Reviewer
Navajo Fish & Wildlife
Natural Heritage Program
Box 1480 Window Rock, AZ 86515

Subject: Biological Evaluation
SR-262 Montezuma Creek to Aneth, San Juan County, Utah
Project Number STP-0262(8)23E

Dear Mr. Malecki,

The Utah Department of Transportation (UDOT) is proposing to improve the existing State Route (SR) 162 in San Juan County from the town of Montezuma Creek to approximately 0.5 miles west of the town of Aneth. Since the project was originally identified in the State Transportation Improvement Plan, SR-262 has been renamed and signed SR-162. Due to the difficulty and potential confusion in changing the project name and number, it was decided that the project name and number would remain as originally labeled. However, this document will refer to all highways by their currently designated route number.

The proposed project calls for improvements to the safety of SR-162 by addressing the substandard areas of the existing roadway. The project is approximately 9 miles long and has a proposed right-of-way of approximately 150 feet on either side of the center line of the existing road. Project improvements would include the removal and replacement of existing culverts to accommodate the road improvements and to better manage surface drainage. Refer to **Figure 1** for the project location map.

The watersheds within the project area are typically undeveloped with some isolated areas of residential or commercial developments along the existing SR-162. The project area is within the Colorado Plateau eco-region and consists of benches, mesas, buttes, salt valleys, and cliffs characteristic of this eco-region. Juniper-pinyon communities are common at higher elevations while saltbush-greasewood and black brush communities dominate the lower elevations.

The existing highway generally parallels the San Juan River. The river has a wetland fringe associated with it as well as a 100-year floodplain. The river channel and the wetland will not be impacted by this project and only small areas of the floodplain will be modified. The project will cross 39 drainage channels, the majority of which are ephemeral. McElmo Creek, one of the largest drainages within the project area, has flowing water for most of the year and an associated wetland. McElmo Creek is part of a separate bridge replacement project and will not be impacted by this SR-162 road improvement project.

For the project, information on federally listed threatened, endangered, or candidate species, and state sensitive or special status species was gathered from the following sources:

- U.S. Fish and Wildlife Service (USFWS)
- Utah Department of Wildlife Resources (UDWR) Natural Heritage Program
- Navajo Nation Department of Fish and Wildlife (NNDFW) Natural Heritage Program
- Information on the biology, distribution, and listing history of each species was obtained from:

- USFWS Federal Register documents;
- the NNDFW Natural Heritage Program;
- Utah Natural Heritage Program's (UNHP) Biodiversity Tracking and Conservation System (BIOTICS);
- field guides;
- communication with field experts at USFWS and UDWR.

The following sections describe the impacts and any avoidance/mitigation measures that UDOT will utilize for this project.

1. THEATENED AND ENDANGERED SPECIES OF CONCERN, THEIR HABITATS, AND POTENTIAL FOR IMPACTS

A total of nine (9) federal species are listed for San Juan County, Utah. **Table 1** lists the species, status, habitat, and the possibility for occurrence within the project area.

Table 1. Federal Special Status Species for the SR-162 Study Area

Common Name	Scientific Name	Status[1]	Habitat[2]	Occurrence in Study Area	Potential Affect
Birds					
Southwestern Willow Flycatcher	*Empidonax traillii extimus*	FE MBTA	Obligate riparian nester, especially in areas of dense willow.	Possible; large areas of suitable nesting habitat along the San Juan River; breeding pair near town of Bluff, Utah	May affect, not likely to adversely affect
California Condor	*Gymnogyps californianus*	FE MBTA	Prefers mountainous country at low and moderate elevations; rocky/brushy areas near cliffs. Colonies roost in tall cliffs, snags or open branched trees.	Unlikely; no suitable roosting sites in the study area	No effect
Yellow-billed Cuckoo	*Coccyzus americanus occidentalis*	FC MBTA	Nests in mature riparian woodland with dense understories of willow and other deciduous species. Nesting areas are large tracts (minimum of 3 hectares) of closed-canopy broad-leaved forest.	Possible; suitable habitat for migration though no suitable nesting habitat. UDWR has recent records of occurrence within 0.5-mile of the study area.	May affect, not likely to adversely affect
Mammals					
Black-footed ferret	*Mustela nigripes*	FE	Prairie dog towns of the plains and plateaus, typically occupy burrows for shelter	Unlikely; closest known population is approximately 200 miles away in central Arizona	No effect
Fish					
humpback chub	*Gila cypha*	FE	Prefers big rivers and lives where water depth, velocity, and turbidity make direct observation difficult	Unlikely; very little preferred habitat in the study area; the San Juan River in this area is too slow and lacks whitewater	No effect
bonytail chub	*Gila elegans*	FE	Found in the Colorado Basin, preferred habitat modest mid-channel currents of sandy, valley, and flatwater reaches, occupy pools and eddies.	Unlikely; suitable habitat in the San Juan River; no known occurrences in this area. Considered extirpated from Navajo Nation.	No effect
Colorado pikeminnow	*Ptychocheilus lucius*	FE	Occurs in the warm, swift waters of the big rivers of the Colorado Basin, adapted to rivers with seasonally variable flow, high silt loads, and turbulence.	Present; known population in San Juan River; may also utilize McElmo Creek. UDWR has recent records of occurrence within 0.5-mile of study area.	No effect

Table 1. Federal Special Status Species for the SR-162 Study Area					
Common Name	**Scientific Name**	**Status[1]**	**Habitat[2]**	**Occurrence in Study Area**	**Potential Affect**
razorback sucker	*Xyrauchen texanus*	FE	Occurs in medium to large rivers with swift turbulent waters, also in backwater area.	Present; known population in San Juan River; may also utilize McElmo Creek during extreme high water. UDWR has recent records of occurrence within 0.5-mile of study area.	No effect
Plants					
Navajo sedge	*Carex specuicola*	FT	Occurs in hanging gardens along seeps and springs, prefers silty soils	Unlikely; preferred habitat does not occur in the study area; only known population in Utah is in southeast Utah along the Chinle Wash on the Navajo Nation in San Juan County.	No effect

[1] Status Abbreviation and Definitions
FE = Federally-listed as endangered under the ESA.
FT = Federally-listed as **threatened** under the ESA.
FC = Federal **candidate** for listing under the ESA.
MBTA = Migratory Bird Treaty Act

[2] Sources: Adams 2003, Oliver 2000, Mikesic et al. 2005, UDWR 2005, UDWR 2006a, Durrant 1952, UDWR 2006b

There is no habitat for the following five (5) federally listed species: the black-footed ferret, the bonytail chub, the California Condor, the humpback chub, and the Navajo sedge. Potential habitat for the remaining four (4) federally listed species does occur within the project area. Those species include the Colorado pikeminnow, the razorback sucker, the Yellow-billed Cuckoo, and the Southwestern Willow Flycatcher (SWWFL). The Colorado pikeminnow and the razorback sucker are known to occur within the San Juan River and may also utilize McElmo Creek. The entire length of the San Juan River in Utah has been designated as Critical Habitat for the Colorado pikeminnow and the razorback sucker. The project area also has riparian habitat suitable for migration of the Yellow-billed Cuckoo, but there is no suitable nesting habitat. The project has large areas of suitable SWWFL nesting habitat along the San Juan River floodplain adjacent to the project. There is also a known breeding pair near the town of Bluff, Utah approximately 15 miles west of the town of Montezuma Creek.

2. MEASURES TO PROTECT THREATENED AND ENDANGERED SPECIES

Surveys for the Yellow-billed Cuckoo and the SWWFL have not been conducted. Surveys will be necessary prior to construction in areas of potential habitat to determine the impacts the project would have on these species. A presence/absence and nesting survey would be conducted for both bird species. Surveys for the Yellow-billed Cuckoo would occur during May to June to correspond with the spring migration and again during August to early September for the fall migration. According to the U.S. Fish and Wildlife Service SWWFL protocol memo, dated July 11, 2000, to determine if the SWWFL is actively nesting within project limits, surveys would occur during three (3) survey periods, with a minimum of one (1) survey per time period. The first survey would occur between May 15 to May 31; the second between June 1 to June 21; and the third between June 22 and July 17.

If present, measures would be taken to avoid disturbing any nesting activities by the SWWFL within the project area. These measures include:

- avoiding work near active SWWFL nests during the nesting season;
- limiting the removal of tamarisk, Russian olive trees, mature cottonwood trees and associated understory vegetation.

The project will not involve any in-stream disturbances of McElmo Creek or the San Juan River. Thus, this project will have "no effect" on the Colorado pikeminnow and the razorback sucker. Best Management Practices (BMPs) will be utilized to reduce adverse impacts to the San Juan River and McElmo Creek. The BMPs are:

- revegetation of disturbed areas
- sediment control structures to prevent sediment migration off-site

3. MIGRATORY BIRD TREATY ACT SPECIES OF CONCERN, THEIR HABITATS, AND POTENTIAL IMPACTS

The Migratory Bird Treaty Act (MBTA) ensures that all migratory birds and their parts, including eggs, nests, and feathers, will be fully protected. **Table 2** is a list of 70 migratory birds that have been documented by USFWS to occur within the project area (Darnall 2008). The table lists the common and scientific name of the bird; the potential for occurrence within the project area; plus potential impacts the project would have on the breeding/nesting activities of the bird. Potential impacts were determined based on the bird's nesting behavior and the time of year the bird has potential to occur within the project area.

Table 2. Migratory Birds with the Potential to Occur Within the Project Area.*

Common Name	Scientific Name	Occurrence Within Project	Potential Nesting Impacts
American Avocet	*Recurvirostra americana*	migratory	No
American Crow	*Corvus brachyrhynchos*	year-round	Possible
American Dipper	*Cinclus mexicanus*	year-round	No
American Goldfinch	*Carduelis tristis*	winter	No
American Kestrel	*Falco sparverius*	year-round	No
American Robin	*Turdus migratorius*	year-round	Possible
Ash-throated Flycatcher	*Myiarchus cinerascens*	summer	Possible
Bald Eagle	*Haliaeetus leucocephalus*	winter	Possible
Barn Swallow	*Hirundo rustica*	summer	Possible
Black Phoebe	*Sayornis nigricans*	rare	No
Black-billed Magpie	*Pica hudsonia*	year-round	Possible
Black-chinned Hummingbird	*Archilochus alexandri*	summer	Possible
Black-headed Grosbeak	*Pheucticus melanocephalus*	summer	Possible
Black-throated Sparrow	*Amphispiza bilineata*	summer	Possible
Blue Grosbeak	*Passerina caerulea*	summer	Possible
Blue-winged Teal	*Anas discors*	rare	No
Brewer's Blackbird	*Euphagus cyanocephalus*	year-round	Possible
Brewer's Sparrow	*Spizella breweri*	summer	Possible
Broad-tailed Hummingbird	*Selasphorus platycercus*	summer	Possible
Brown-headed cowbird	*Molothrus ater*	summer	Possible
Bullock's Oriole	*Icterus bullockii*	summer	Possible
Burrowing Owl	*Athene cunicularia*	summer	Possible
California Gull	*Larus californicus*	migration	No
Canada Goose	*Branta canadensis*	year-round	No
Canyon Wren	*Catherpes mexicanus*	year-round	Possible
CSsin's Kingbird	*Tyrannus vociferans*	summer	Possible
Chipping Sparrow	*Spizella passerina*	summer	Possible
Cinnamon Teal	*Anas cyan optera*	summer	No
Cliff Swallow	*Petrochelidon pyrrhonota*	summer	Possible

Table 2. Migratory Birds with the Potential to Occur Within the Project Area.*			
Common Name	**Scientific Name**	**Occurrence Within Project**	**Potential Nesting Impacts**
Common Nighthawk	*Chordeiles minor*	summer	Possible
Common Raven	*Corvus corax*	year-round	No
Common Yellowthroat	*Geothlypis trichas*	summer	Possible
Ferruginous Hawk	*Buteo regalis*	year-round	Possible
Golden Eagle	*Aquila chrysaetos*	year-round	Possible
Great Blue Heron	*Ardea herodias*	migratory	No
Horned Lark	*Eremophila alpestris*	year-round	Possible
House Finch	*Carpodacus mexicanus*	year-round	Possible
Killdeer	*Charadrius vociferus*	year-round	Possible
Lark Sparrow	*Chondestes grammacus*	summer	Possible
Lazuli Bunting	*Passerina amoena*	summer	Possible
Lesser Goldfinch	*Carduelis psaltria*	summer	Possible
Loggerhead Shrike	*Lanius ludovicianus*	year-round	Possible
Mallard	*Anas platyrhynchos*	winter	No
Mountain Bluebird	*Sialia currucoides*	year-round	Possible
Mourning Dove	*Zenaida macroura*	year-round	Possible
N. Rough-winged Swallow	*Stelgidopteryx serripennis*	summer	Possible
Northern Harrier	*Circus cyaneus*	year-round	No
Northern Mockingbird	*Mimus polyglottos*	year-round	Possible
Peregrine Falcon	*Falco peregrinus*	year-round	Possible
Prairie Falcon	*Falco mexicanus*	year-round	No
Red-tailed Hawk	*Buteo jamaicensis*	year-round	No
Red-winged Blackbird	*Agelaius phoeniceus*	year-round	No
Rock Wren	*Salpinctes obsoletus*	year-round	Possible
Sage Sparrow	*Amphisipiza belli*	summer	Possible
Sage Thrasher	*Oreoscoptes montanus*	summer	Possible
Say's Phoebe	*Sayornis saya*	year-round	No
Snowy Egret	*Egretta thula*	migratory	No
Song Sparrow	*Melospiza melodia*	year-round	Possible
Spotted Sandpiper	*Actitis macularia*	summer	Possible
Spotted Towhee	*Pipilo maculatus*	year-round	Possible
Swainson's Hawk	*Buteo swainsoni*	summer	No
Turkey Vulture	*Cathartes aura*	summer	No
Violet-green Swallow	*Tachycineta thalassina*	summer	Possible
Western Kingbird	*Tyrannus verticalis*	summer	Possible
Western Meadowlark	*Sturnella neglecta*	year-round	Possible
Western Tanager	*Piranga ludoviciana*	summer	Possible
White-faced Ibis	*Plegadis chihi*	migratory	No
White-throated Swift	*Aeronautes saxatalis*	summer	No
Yellow Warbler	*Dendroica petechia*	summer	Possible
Yellow-breasted Chat	*Icteria virens*	summer	Possible
*Information provided by Nathan Darnall, USFWS, January 2008.			

The potential for foraging of Ferruginous Hawk, the Peregrine Falcon, the Golden Eagle, and the Bald Eagle within the project area is likely. Because the project impacts only a small amount of foraging habitat compared to the large amount of habitat remaining the project will have no impact on these bird species. There is potential nesting habitat for the Ferruginous Hawk and the

Peregrine Falcon and the project could impact these areas. Surveys to determine the presence of active nests should occur before construction and in the appropriate time of year.

4. MEASURES TO PROTECT MBTA SPECIES

Avoid nesting areas

To avoid impacts to migratory birds, UDOT should avoid construction (i.e. within a mile, or half mile – depending on the species) during their brooding seasons. According to communications in January 2008 with Nathan Darnall, U.S. Fish and Wildlife biologist, generally the nesting period for most passerine species in the project area is May through August with some species starting even earlier. Waterfowl and Burrowing Owls may have nesting seasons that start in March or April. Migratory raptors have brooding seasons that can be as early as January 1 thru August 31.

To avoid impacts UDOT may:

- avoid the nesting season within the spatial buffer for the species of concern;
- begin work before the nesting season and continue without stopping until far enough away from the nest site;
- make the habitat undesirable for ground nesting birds, such as the Burrowing Owl, by disturbing potential nesting habitat in the winter before the beginning of nesting season;

Spatial Buffers

For raptors, the recommended spatial buffer for active nests is 1.0 mile for most threatened and endangered species (Romin and Muck 2002). For other diurnal raptors the spatial buffer is 0.5 miles, except for the Prairie Falcon, which is 0.25 miles (Romin and Muck 2002). Burrowing Owls require a spatial buffer of 0.25 miles. No spatial buffer is presently considered necessary for the American Kestrel (Romin and Muck 2002).

Following construction, all terrestrial disturbances will be revegetated using native species.

5. UDWR SPECIAL STATUS SPECIES, THEIR HABITATS, AND POTENTIAL FOR IMPACTS

Only those species that have not been previously mentioned will be discussed in this section.

Table 3. UDWR Special Status Species in Addition to the Federally Listed Species for the SR-162 Study Area.

Common Name	Scientific Name	Status[1]	Habitat[2]	Occurrence in Study Area	Potential Affect
Mammals					
Townsend's big-eared bat	*Corynorhinus townsendii*	USS-SPC	Variety of habitats, desert shrub, montane forest, mixed forest. Inhabits caves, mines, and buildings.	Unlikely; no suitable roosting sites in the study area; may occur during foraging only	No impact
Allen's big-eared bat	*Idionycteris phyllotis*	USS-SPC	Wide range of habitat including lowland riparian, desert shrub to mixed forest, rocky and woodland habitats; roosts in caves and rock crevices during the day.	Possible; may occur during foraging only, rare in Utah; none observed	No impact
fringed myotis	*Myotis thysanodes*	USS-SPC	Variety of habitats, including mixed conifer, desert riparian, and pinyon-juniper in areas with rocky outcroppings, cliffs, and canyons. Inhabits caves, mines, and buildings, most often in desert and woodland areas.	Unlikely; no suitable roosting sites in the study area; may occur during foraging only	No impact

Table 3. UDWR Special Status Species in Addition to the Federally Listed Species for the SR-162 Study Area.

Common Name	Scientific Name	Status[1]	Habitat[2]	Occurrence in Study Area	Potential Affect
big free-tailed bat	*Nyctinomops macrotis*	USS-SPC	Variety of habitats, including lowland riparian, desert shrub, montane forest, rocky and woodland areas; roosts in caves, abandoned mines, buildings, and rock crevices.	Possible; may occur during foraging only; rare in Utah; none observed	No impact
silky pocket mouse	*Perognathus flavus*	USS-SPC	Inhabits sandy soils associated with river banks with sparse stands of weeds and shrubs	Possible; coarse soils are present in much of the study area	May Impact
Reptiles					
common chuckwalla	*Sauromalus ater*	USS-SPC	Preferred habitat is boulder-covered slopes, at elevations up to 4,500 feet; most common at lower elevations	Unlikely; the study area contains limited suitable habitat; there are no known occurrences along the San Juan River	No impact
desert night lizard	*Xantusia vigilis*	USS-SPC	Prefers arid to semiarid lands, occupy fallen plant debris, rock crevices, under bark. Can occur up to 9,300 feet in elevation	Possible; documented occurrences in this part of San Juan County	May Impact
Fish					
bluehead sucker	*Catostomus discobolus*	USS-CS	Occur primarily in rivers and streams with widely varying characteristics	Likely; suitable habitat in San Juan River and McElmo Creek. UDWR has recent records of occurrence within 0.5-mile of study area.	No impact
flannelmouth sucker	*Catostomus latipinnis*	USS-CS	Inhabit a variety of river habitats including riffles, runs, eddies, and backwaters.	Likely; known population in San Juan River; may also utilize McElmo Creek. UDWR has recent records of occurrence within 0.5-mile of study area.	No impact
roundtail chub	*Gila robusta*	USS-CS	Found in warm streams and larger rivers, usually in habitats with slow-flowing water adjacent to areas of faster water.	Likely; suitable habitat in the San Juan River. UDWR has recent records of occurrence within 0.5-mile of study area.	No impact

[1] Status Abbreviation and Definitions
USS= Utah Sensitive Species;
CS= **Conservation Agreement Species**
SPC=**Wildlife Species of Concern**

[2] Sources: Adams 2003, Oliver 2000, Mikesic et al. 2005, UDWR 2005, UDWR 2006a, Durrant 1952, UDWR 2006b

As can be seen in **Table 3**, of the ten (10) species of concern listed by the UDWR, seven (7) were determined to have potential habitat within the project area. With the exception of the fish species, no known populations of the listed UDWR species occur within the project area. UDWR has identified a population of bluehead suckers in the San Juan River within 0.5 miles of the project. Habitat for the bluehead sucker was also identified in McElmo Creek as well as the San Juan River within the project area. UDWR has also identified populations of the flannelmouth sucker and the roundtail chub within the San Juan River. No individuals of any of the previously mentioned UDWR listed species were observed within the project limits.

The project will have no impacts on the UDWR listed sensitive bat species. Only foraging habitat has been identified within the project limits for the Allen's big-eared bat, the big free-

tailed bat, the fringed myotis, and the Townsend's big-eared bat. Bat species tend to forage over flowing streams or in areas of high insect populations. There will be no impacts to potential foraging streams, such as McElmo Creek and the San Juan River. Any impacts to upland foraging habitats will not adversely impact these species because large amounts of upland foraging habitats exist outside of the project limits.

Habitat for the silky pocket mouse and the desert night lizard does occur within the project area. Areas adjacent to the San Juan River will be altered to accommodate the road improvements, which may temporarily affect any silky pocket mouse populations that might exist. The night lizard is associated with rock crevices and fallen plant debris, which are present within the project limits.

6. MEASURES TO PROTECT UDWR SPECIAL STATUS SPECIES

To protect the sensitive fish species, UDOT will utilize BMPs to keep sediments on the construction site and out of the streams within the project area. Silt fences and temporary ditches may be used to capture sediments and direct them away from streams.

To protect the sensitive bat species the project should avoid adversely impacting streams with permanent or intermittent water flow. These streams provide the insect populations the bats feed on as well as the watering sources the bats depend on. The project will utilize BMPs to prevent the degradation of McElmo Creek and the San Juan River.

Avoiding potential habitat for the silky pocket mouse and the desert lizard may not be possible. One way to mitigate for the loss of habitat would be the creation of new habitats within the disturbed areas. For the silky pocket mouse, this will be accomplished by the revegetation of the disturbed areas with herbaceous and shrub species. The placement of earth and rocks within disturbed areas would encourage the desert lizard to utilize areas within the project limits.

7. NAVAJO NATION SPECIAL STATUS SPECIES, THEIR HABITATS, AND POTENTIAL FOR IMPACTS

Only those species that have not been previously mentioned will be discussed in this section. **Table 4** lists the Navajo Nation special status species for this project.

Table 4. Navajo Nation Special Status Species in Addition to the Federally Listed Species for the SR-162 Study Area

Common Name	Scientific Name	Status[1]	Habitat[2]	Occurrence in Study Area	Potential Affect
Amphibians					
Northern leopard frog	*Rana pipiens*	NN-Group 2	Prefers wetland areas such as small streams, ponds, and ditches with dense vegetation and permanent water. Can also be found around lakes and marshes.	Unlikely; historic records of occurrence along the San Juan River, but no suitable habitat is present in the study area; all the wetlands in the study area are only seasonally flooded and do not contain dense herbaceous vegetation	No impact

Table 4. Navajo Nation Special Status Species in Addition to the Federally Listed Species for the SR-162 Study Area					
Common Name	**Scientific Name**	**Status[1]**	**Habitat[2]**	**Occurrence in Study Area**	**Potential Affect**
Fish					
mottled sculpin	*Cottus bairdi*	NN-Group 4	Inhabit small, clear streams and large lakes with rocky shores; occupy riffles and pools over sand and gravel.	Unlikely; no suitable habitat	No impact
Plants					
Cronquist milkvetch	*Astragalus cronquistii*	NN-Group 4	Prefers salt desert shrub and blackbrush communities on sandy, gravelly soils	Possible; suitable habitat in much of the study area; none observed	May impact

[1] Status Abbreviation and Definitions

NN = Navajo Nation Endangered Species Lists

Group 2: Endangered; a species or subspecies whose prospects of survival or recruitment within the Navajo Nation are in jeopardy.

Group 4: Any species or subspecies for which the Navajo Nation Department of Fish and Wildlife does not currently have sufficient information to support their being listed in Groups 2 or 3 but has reason to consider them.

[2] Sources: Adams 2003, Oliver 2000, Mikesic et al. 2005, UDWR 2005, UDWR 2006a, Durrant 1952, UDWR 2006b

This project will have no impacts on two (2) of the NNDFW listed species, the Northern leopard frog and the mottled sculpin, because the project area does not have habitat to support these species.

The project could impact the Cronquist milk-vetch. Habitat for the this milk-vetch was found throughout the project area. The project may impact the Cronquist milk-vetch if the species is within construction areas.

8. MEASURES TO PROTECT NAVAJO NATION SPECIAL STATUS SPECIES

If possible, UDOT will make every attempt to avoid areas of Cronquist milk-vetch. Because most of the project area has been identified as having habitat for this species, it may not be possible to avoid populations of this sensitive plant species.

9. CONCLUSIONS AND RECOMMENDATIONS

The proposed safety improvements to the existing SR-162 will have “no effect” on the seven (7) federally listed species: California Condor, black-footed ferret, humpback chub, bonytail chub, Colorado pikeminnow, razorback sucker, and the Navajo sedge. The project area does have habitat that could support the SWWFL and the Yellow-billed Cuckoo, but impacts cannot be determined until presence/absence and nesting surveys can be conducted prior to construction. As a result, the project “may affect, but is not likely to adversely affect” the SWWFL and the Yellow-billed Cuckoo. If these two (2) bird species or active nests are observed, no construction will occur near nesting sites during their nesting season. Spatial buffers will be utilized around habitat areas to minimize impacts when the birds are present.

There could be impacts to migratory birds. To avoid impacts, construction will begin prior to the nesting season and continue without ceasing. Surveys will be conducted prior to construction to determine the presence of active raptor nests within the construction areas. Buffers will be utilized to avoid active raptor nesting sites. To discourage ground nesting birds from nesting within construction areas, these areas will be disturbed prior to the nesting season to make them less desirable.

There could be impacts to the UDWR listed silky pocket mouse and the night lizard due to habitat destruction. Revegetation of disturbed areas and the placement of earth and rock in the course of construction may create new habitats for the silky pocket mouse and the night lizard.

UDOT will make every attempt to avoid the Cronquist milk-vetch, but because much of the project area has been identified as having habitat for this sensitive plant species, this may not be possible.

Streams within the project area may be subject to the jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act. The determination of jurisdiction for those streams will be coordinated with the U.S. Army Corps of Engineers.

On behalf of UDOT, I request your concurrence with these findings. I have attached the correspondence from the agencies that responded to our request for information on special status species. If you have any questions or comments, please contact me at 801.904.4068.

Thank you for your assistance.

URS Corporation

Devetta Hill
Senior Ecologist

Attachments
cc: Brenda Redwing, FHWA
Rebecka Stromness, UDOT Environmental Program Manager
Shane Marshall, UDOT Environmental Division
Paul West, UDOT Environmental
Betsy Skinner, UDOT Environmental
Kim Manwill, UDOT Region 4
Randall Taylor, UDOT Region 4
Jared Barton, UDOT Region 4
Chris Wood, UDWR Habitat Manager, Price
Project File

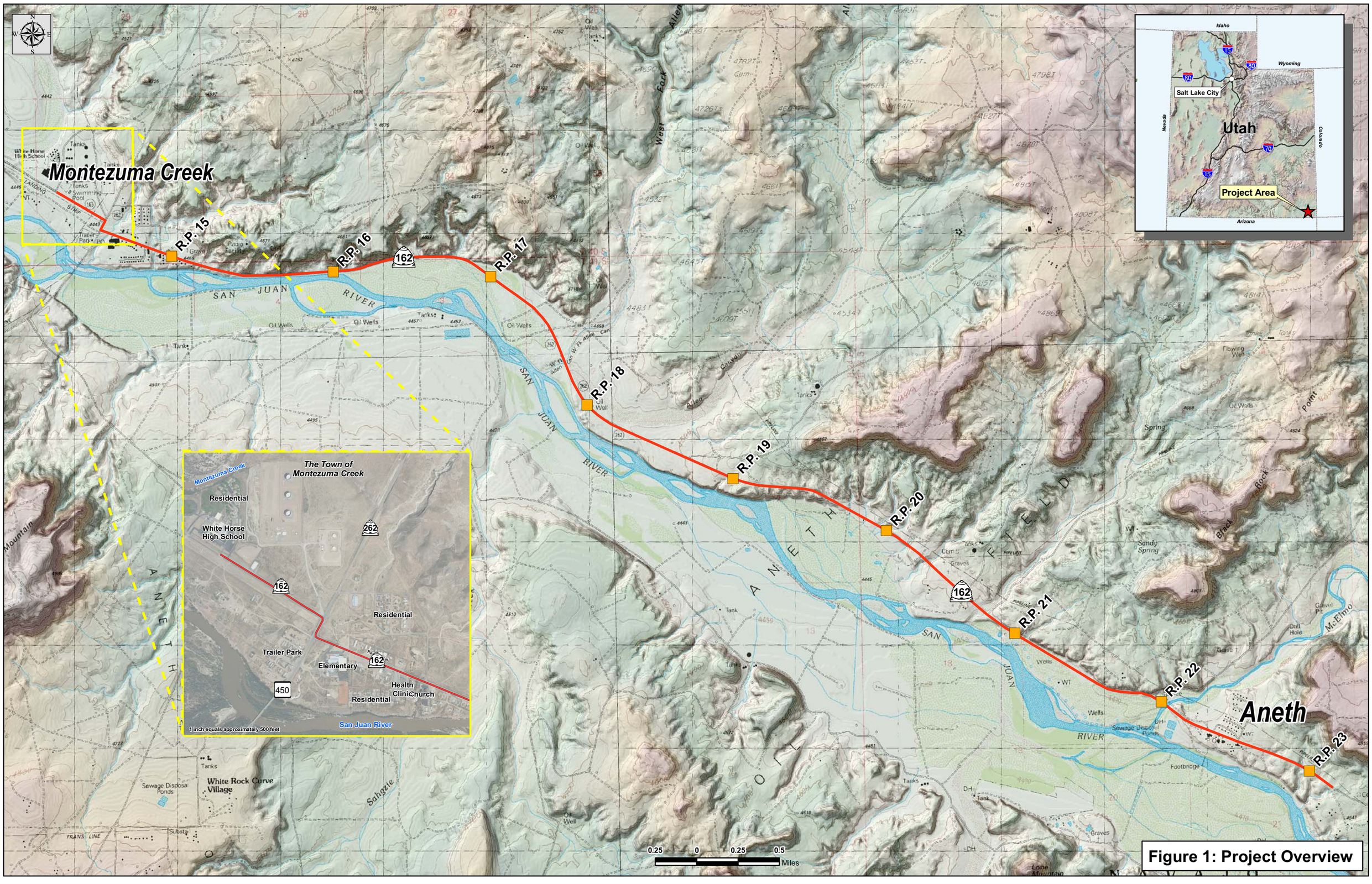

Figure 1: Project Overview

PROJ # 24584702
FILE # 15-70

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Wildlife Resources

JAMES F. KARPOWITZ
Division Director

September 7, 2006

Andy Herb
URS Corporation
756 East Winchester Street, Suite 400
Salt Lake City, Utah 84107

Dear Andy Herb:

I am writing in response to your email dated September 5, 2006 regarding information on species of special concern proximal to the URS project located on approximately 8 miles of SR 262 in San Juan County, Utah.

Within a ½-mile radius of the project area noted above the Utah Division of Wildlife Resources (UDWR) has recent records of occurrence for Colorado pikeminnow, bluehead sucker, flannelmouth sucker, razorback sucker, roundtail chub, and yellow-billed cuckoo. All of the aforementioned species are included on the *Utah Sensitive Species List.*

The information provided in this letter is based on data existing in the Utah Division of Wildlife Resources' central database at the time of the request. It should not be regarded as a final statement on the occurrence of any species on or near the designated site, nor should it be considered a substitute for on-the-ground biological surveys. Moreover, because the Utah Division of Wildlife Resources' central database is continually updated, and because data requests are evaluated for the specific type of proposed action, any given response is only appropriate for its respective request.

In addition to the information you requested, other significant wildlife values might also be present on the designated site. Please contact UDWR's habitat manager for the southeastern region, Chris Wood, at (435) 636-0279 if you have any questions.

Please contact our office at (801) 538-4759 if you require further assistance.

Sincerely,

Sarah Lindsey

Sarah Lindsey
Information Manager
Utah Natural Heritage Program

cc: Chris Wood, SER

1594 West North Temple, Suite 2110, PO Box 146301, Salt Lake City, UT 84114-6301
telephone (801) 538-4700 • facsimile (801) 538-4709 • TTY (801) 538-7458 • *www.wildlife.utah.gov*

THE NAVAJO NATION
P.O. BOX 9000 • WINDOW ROCK, ARIZONA • 86515

PROJ # 24584702
FILE # 15-67

PRESIDENT
JOE SHIRLEY, JR.
VICE PRESIDENT
FRANK J. DAYISH, JR.

03 April 2006

File#06URS02

Andy Herb, Project Biologist
URS Corporation
756 E. Winchester Street
Suite 400
Salt Lake City, UT 84107

SUBJECT: SR-262; MONTEZUMA CREEK TO ANETH DATA REQUEST FOR SPECIES OF CONCERN

Mr. Herb:

The following information on species of concern[1] is provided in response to your 27 March 2006 request concerning the subject project, which consists of the Federal Highway Administration (FHWA) and the Utah Department of Transporation (UDOT) proposed corridor extension from Montezuma Creek, Utah to Aneth, Utah.

Each 7.5-minute quadrangle containing project boundaries is addressed separately below. For potentially occurring species these species lists are quadrangle-specific rather than project-specific. Potential for species has been determined primarily on quadrangle-wide coarse habitat characteristics and species range information. Your project biologist should determine habitat suitability at the project site(s).

A total of fourteen (14) species both known and/or potential are included in this response. They are:

1. Aquila chrysaetos (Golden Eagle); NESL group 3; MBTA; EPA.
2. Buteo regalis (Ferruginous Hawk); NESL group 3; MBTA.
3. Catostomus discobolus (Bluehead Sucker); NESL group 4.
4. Cinclus mexicanus (American Dipper); NESL group 3; MBTA.
5. Cottus bairdi (Mottled Sculpin); NESL group 4.
6. Empidonax traillii extimus (Southwestern Willow Flycatcher); NESL group 2; ESA endangered; MBTA.
7. Falco peregrinus (Peregrine Falcon); NESL group 4; MBTA.
8. Gila robusta (Roundtail Chub); NESL group 2.
9. Haliaeetus leucocephalus (Bald Eagle); ESA threatened; MBTA; EPA.
10. Mustela nigripes (Black-footed Ferret); NESL group 2; ESA endangered.

[1] "Species of concern" include protected, candidate, and other rare or otherwise sensitive species, including certain native species and species of economic or cultural significance. For each species, the following tribal and federal statuses are indicated: Navajo Endangered Species List (NESL), federal Endangered Species Act (ESA), Migratory Bird Treaty Act (MBTA), and Eagle Protection Act (EPA). No legal protection is afforded species with **only** ESA candidate or NESL group 4 status; please be aware of these species during surveys and inform the NFWD of observations. Documentation that these species are more numerous or widespread than currently known, and addressing these species in project planning and management is important for conservation and may contribute to ensuring they will not be uplisted in the future. Species without ESA or NESL legal protection (e.g., NESL group 4 species) are only included in responses on a regular basis and may not be included in this response. Please refer to the NESL for a list of group 4 species; contact me if you need a copy.

11. Ptychocheilus lucius (Colorado Pikeminnow); NESL group 2; ESA threatened.
12. Rana pipiens (Northern Leopard Frog); NESL group 2.
13. Xyrauchen texanus (Razorback Sucker); NESL group 2; ESA endangered.
14. Astragalus cronquistii (Cronquist Milk-vetch); NESL group 4.

MONTEZUMA CREEK, UT 7.5-MINUTE QUADRANGLE

Project Location: T40S, R24E, Sec. 32 (RP 15, RP 16, RP17)
T41S, R24E, Sec. 4, 3, 2

Species of concern **known** to occur on or near the project site(s) include:

1. Empidonax traillii extimus; For more information contact David Mikesic, NFWD Zoologist, at (928) 871-7070.
2. Xyrauchen texanus; For more information contact David Mikesic, NFWD Zoologist, at (928) 871-7070.

Species of concern with **potential** to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. Aquila chrysaetos
2. Buteo regalis
3. Catostomus discobolus
4. Cinclus mexicanus
5. Cottus bairdi
6. Falco peregrinus
7. Gila robusta
8. Haliaeetus leucocephalus
9. Mustela nigripes
10. Ptychocheilus lucius
11. Rana pipiens
12. Astragalus cronquistii

Also of concern are impacts to any **wetland or riparian habitats** and their associated species, such as those of San Juan River.

WHITE MESA VILLAGE, UT 7.5-MINUTE QUADRANGLE

Project Location: T41S, R24E, Sec. 2, (RP 18)

Species of concern **known** to occur on or near the project site(s) include:

1. Xyrauchen texanus; For more information contact David Mikesic, NFWD Zoologist, at (928) 871-7070.

Species of concern with **potential** to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. Aquila chrysaetos
2. Buteo regalis
3. Catostomus discobolus
4. Charadrius montanus
5. Cinclus mexicanus
6. Cottus bairdi
7. Empidonax traillii extimus
8. Falco peregrinus
9. Gila robusta

10. Haliaeetus leucocephalus
11. Mustela nigripes
12. Ptychocheilus lucius
13. Rana pipiens
14. Astragalus cronquistii

Also of concern are impacts to any **wetland or riparian habitats** and their associated species, such as those of San Juan River.

ANETH, UT 7.5-MINUTE QUADRANGLE

Project Location: T41S, R24E, Sec. 11, 12
T41S, R25E, Sec. 7, 18, 17, 16, 21

Known to occur within three miles of the project site:

1. Astragalus cronquistii

Species of concern with **potential** to occur on the 7.5-minute quadrangle(s) containing the project boundaries include the following:

1. Aquila chrysaetos
2. Buteo regalis
3. Catostomus discobolus
4. Charadrius montanus
5. Cinclus mexicanus
6. Cottus bairdi
7. Empidonax traillii extimus
8. Falco peregrinus
9. Gila robusta
10. Haliaeetus leucocephalus
11. Mustela nigripes
12. Ptychocheilus lucius
13. Rana pipiens
14. Xyrauchen texanus

Also of concern are impacts to any **wetland or riparian habitats** and their associated species, such as those of San Juan River.

Potential for the black-footed ferret should be evaluated if prairie-dog towns of sufficient size (per NFWD guidelines) occur in the project area.

Potential for Puccinellia parishii should be evaluated if wetland conditions exists that contain white alkaline crusts.

Biological surveys need to be conducted during the appropriate season to ensure they are complete and accurate please refer to NN Species Accounts.[4] Further questions pertaining to surveys should be referred to Species Account. Surveyors on the Navajo Nation must be **permitted** by the Director, NFWD. Contact Jeff Cole at (928) 871-7068 for permitting procedures. Questions pertaining to surveys should be directed to the NFWD Zoologist (David Mikesic) for animals at 871-7070, and Botanist (Daniela Roth) for plants at

[4] Available upon request free of charge by contacting Data Manager at 871-6489

(928)523-8445. Questions regarding biological evaluation should be directed to Rita Whitehorse-Larsen (Environmental Reviewer) at 871-7060.

On 21 March 1994 (Federal Register, Vol. 59, No. 54), the U.S. Fish and Wildlife Service designated portions of the San Juan River (SJR) as critical habitat for Ptychocheilus lucius (Colorado squawfish) and Xyrauchen texanus (Razorback sucker). Colorado squawfish critical habitat includes the SJR and its 100-year floodplain from the State Route 371 Bridge in T29N, R13W, sec. 17 (New Mexico Meridian) to Neskahai Canyon in the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian) up to the full pool elevation. Razorback sucker critical habitat includes the SJR and its 100-year floodplain from the Hogback Diversion in T29N, R16W, sec. 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T41S, R11E, sec. 26 (Salt Lake Meridian). All actions carried out, funded or authorized by a federal agency which may alter the constituent elements of critical habitat must undergo section 7 consultation under the Endangered Species Act of 1973, as amended. Constituent elements are those physical and biological attributes essential to a species conservation and include, but are not limited to, water, physical habitat, and biological environment as required for each particular life stage of a species.

Potential impacts to **wetlands** should also be evaluated. The U.S. Fish & Wildlife Service's National Wetlands Inventory (NWI) maps should be examined to determine whether areas classified as wetlands are located close enough to the project site(s) to be impacted. In cases where the maps are inconclusive (e.g., due to their small scale), field surveys must be completed. For field surveys, wetlands identification and delineation methodology contained in the "Corps of Engineers Wetlands Delineation Manual" (Technical Report Y-87-1) should be used. When wetlands are present, potential impacts must be addressed in an environmental assessment and the Army Corps of Engineers, Phoenix office, must be contacted. NWI maps are available for examination at the NFWD's Natural Heritage Program (NHP) office, or may be purchased through the U.S. Geological Survey (order forms are available through the NHP). The NHP has complete coverage of the Navajo Nation, excluding Utah, at 1:100,000 scale; and coverage at 1:24,000 scale in the southwestern portion of the Navajo Nation.

The information in this report was identified by the NFWD's biologists and computerized database, and is based on data available at the time of this response. If project planning takes more than two (02) years from the date of this response, verification of the information provided herein is strongly recommended. It should not be regarded as the final statement on the occurrence of any species, nor should it substitute for on-site surveys. Also, because the NFWD's information is continually updated, any given information response is only wholly appropriate for its respective request.

For a list of sensitive species on the Navajo Nation please refer to our website at www.navajofishandwildlife.org.

An invoice for this information is attached.

If you have any questions I may be reached at (928) 871-6472.

Sonja Detsoi, Wildlife Tech.
Natural Heritage Program
Department of Fish and Wildlife

CONCURRENCE

Gloria M. Tom, Director
Department of Fish & Wildlife
Division of Natural Resources

xc: file/chrono
Field Supervisor, USFWS, UT Ecological Services Field Office

United States Department of the Interior
FISH AND WILDLIFE SERVICE
UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

February 27, 2008

In Reply Refer To
FWS/R6
ES/UT
08-I-0051

Mr. Paul W. West
UDOT: Environmental Division
Box 148450
Salt Lake City, Utah 84114-8450

RE: STP-0262(8)23E; SR-262, Montezuma Creek to Aneth, San Juan County, Utah

Dear Mr. West:

Based on information provided in your letter of February 12, 2008 and emails dated February 26 and February 27, 2008, we concur with your "not likely to adversely affect" determination for the southwestern willow flycatcher and yellow billed cuckoo for the subject project. Our concurrence for the southwestern willow flycatcher, an endangered species, is based on your commitment to survey for the species this field season. If any southwestern willow flycatcher nest sites are found, UDOT has committed to avoid construction during the breeding season within 0.25 mile of the nest site (email from Paul West, UDOT to Laura Romin, FWS dated February 27, 2008). We understand that UDOT will also conduct surveys for the yellow billed cuckoo. We recommend similar protection measures be applied to this species if nests are located within the project area. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered.

We are addressing this letter to Utah Department of Transportation, with a copy to Federal Highway Administration, as only a Federal agency can enter into formal Endangered Species Act section 7 consultation with the Service. A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare a biological assessment by giving written notice to the Service of such a designation. The ultimate responsibility for compliance with ESA section 7, however, remains with the Federal agency.

We appreciate your interest in conserving endangered species. If further assistance is needed, please contact Laura Romin at (801) 975-3330 extension 142.

Sincerely,

for Larry Crist
Utah Field Supervisor

cc: Gregory Punske, U.S. Department of Transportation, Federal Highway Administration, 2520 West 4700 South, Suite 9-A, Salt Lake City, Utah 84118

NNDF&WL Review No. URS021208

BIOLOGICAL RESOURCES COMPLIANCE FORM
NAVAJO NATION DEPARTMENT OF FISH AND WILDLIFE
P.O. BOX 1480, WINDOW ROCK, ARIZONA 86515-1480

COMPLIANCE	☐
CONDITIONAL COMPLIANCE	☒

It is the Department's opinion the project described below, with applicable conditions, is in compliance with Tribal and Federal laws protecting biological resources including the Navajo Endangered Species and Environmental Policy Codes, U.S. Endangered Species, Migratory Bird Treaty, Eagle Protection and National Environmental Policy Acts. This form does not preclude or replace consultation with the U.S. Fish and Wildlife Service if a Federally-listed species is affected.

PROJECT NAME & NO.: SR-262 Montezuma Creek to Aneth improvement project - Project # STP-0262(8)23E

DESCRIPTION: improvement of SR-262 highway 9 miles in length w/150ft ROW either side of centerline

LOCATION: Montezuma Creek to Aneth San Juan County NM

REPRESENTATIVE: URS

ACTION AGENCY: Utah DOT

B.R. REPORT TITLE / DATE / PREPARER: SR-262 Montezuma Creek to Aneth San Juan County NM Project # STP-0262(8)23E / 12 February 2008 / Devetta Hill

SIGNIFICANT BIOLOGICAL RESOURCES FOUND: None - surveys have not been conducted as of yet

POTENTIAL IMPACTS

TRIBAL ENDANGERED SPECIES (G2 & G3) TAKEN: Southwestern Willow Flycatcher, Yellow-billed Cukoo, Razorback Sucker

FEDERALLY-LISTED SPECIES AFFECTED: Southwestern Willow Flycatcher, Razorback Sucker

OTHER SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES: Cronquist Milkvetch

AVOIDANCE / MITIGATION MEASURES: Avoid all Southwestern Willow Flycatcher/Yellow-billed Cukoo breeding areas if individuals are found. When conducting Southwestern Willow Flycatcher/Yellow-billed Cukoo surveys, please conduct opportunistic surveys for Northern Leopard Frog (NESL Group 2) & report any findings. Identify, avoid, transplant, or collect seeds to be given to NNHP herbarium for any Cronquist Milkvetch found within action area. All project equiptment and personel shall remain in project area - the use of best available construction practices is required to limit impacts to land, water (surface and ground), and biological resources e.g. use of drift fence especially in riparian areas to limit erosion & siltation into waterways & sensitive habitats. - Included is NNDFW comments letter for scoping on the EIS (from 13 February 2008), which mirror concerns for the BE.

CONDITIONS OF COMPLIANCE*: all conservation, avoidance, & mitigation measures shall be followed

FORM PREPARED BY / DATE: Ron W. Malecki / 10 March 2008

COPIES TO: (add categories as necessary)

- ☐ Navajo Environmental Protection Agency
- ☐ U.S. Fish and Wildlife Service, NM Field Office
- ☒ U.S. Fish and Wildlife Service, AZ Field Office
- ☒ BIA Navajo Region, Environmental Services
- ☒ U.S. Fish and Wildlife Service, UT Field Office
- ☐ (Other)

2 NTC § 164 Recommendation:

- ☐ Approval
- ☒ Conditional Approval (with memo)
- ☐ Disapproval (with memo)
- ☐ None (with memo)

Signature: Gloria M. Tom, Director, Navajo Nation Department of Fish and Wildlife

Date: 3/12/08

*I understand and accept the conditions of compliance, and acknowledge that lack of signature may be grounds for the Department not recommending the above described project for approval to the Tribal Decision-maker.

Representative's signature

Date

"Jared Barton" <jaredbarton@utah.gov>
08/26/2008 11:42 AM

To "Kara Hellige" <Kara.A.Hellige@usace.army.mil>
cc <Valerie_Porter@URSCorp.com>, "Kim Manwill" <KMANWILL@utah.gov>, "Randall Taylor" <RANDALLTAYLOR@utah.gov>
bcc
Subject SR-262; Montezuma Creek to Aneth - Request for Preliminary Jurisdiction Determination

Kara,
UDOT's consultant URS, submitted a wetland delineation report to the Army Corps Durango office entitled Wetland Delineation Report For SR-262; Montezuma Creek to Aneth STP-0262(8)23E being dated December 14, 2007.

UDOT has reviewed this delineation report and accepts it as submitted by URS. UDOT formally requests a Preliminary Jurisdiction Determination to help expedite the 404 process and allow the project to proceed in a timely manner. UDOT understands that the mitigation measures for this project will be based on the report as accepted.
If you have any questions please notify me.
Thanks,
Jared

Jared Barton
U.D.O.T. Region Four
Landscape Architect
1345 South 350 West
Richfield, Utah 84701
Ph. (435) 893-4741
Fax (435) 896-6458
jaredbarton@utah.gov

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